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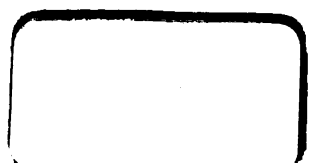
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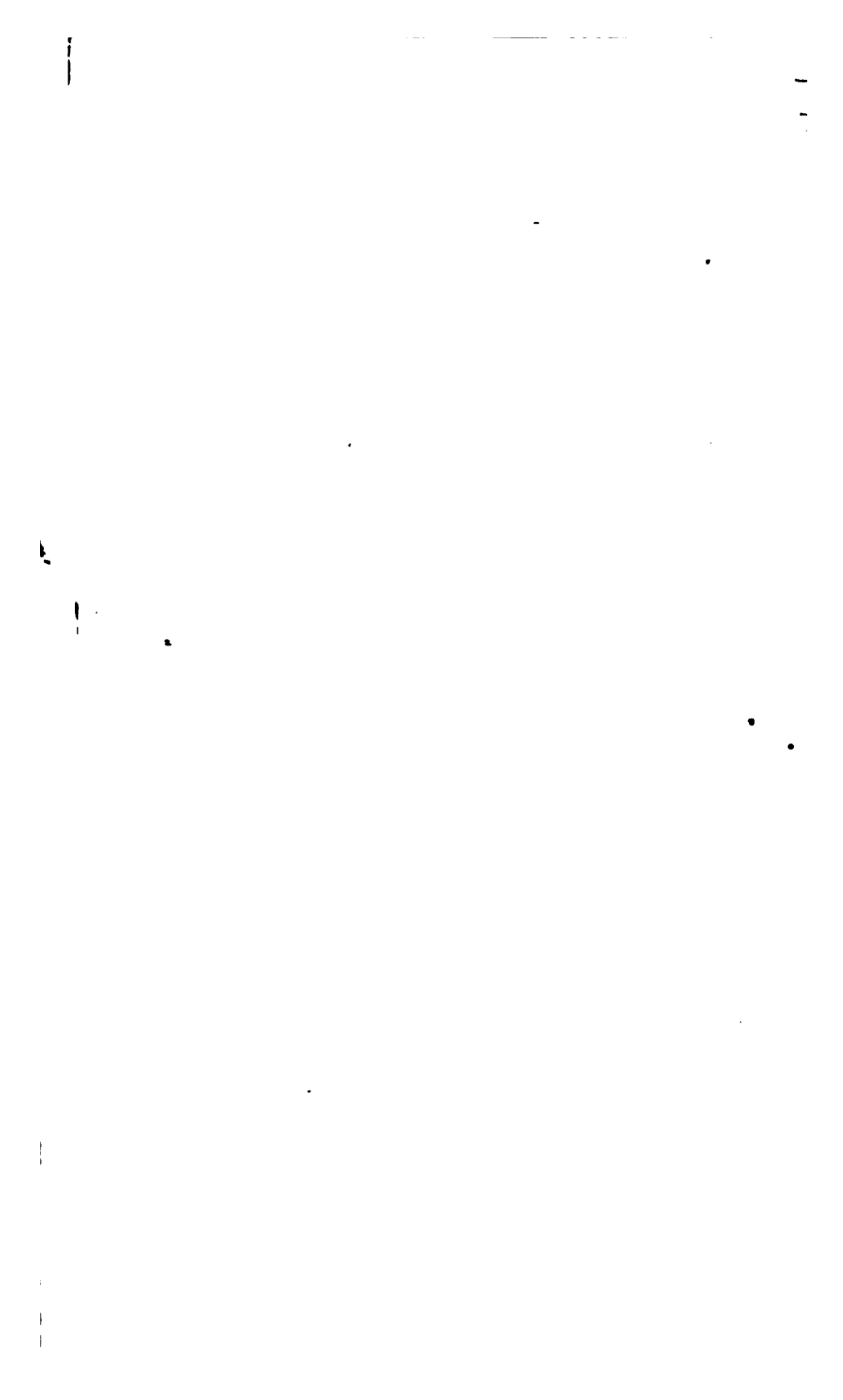
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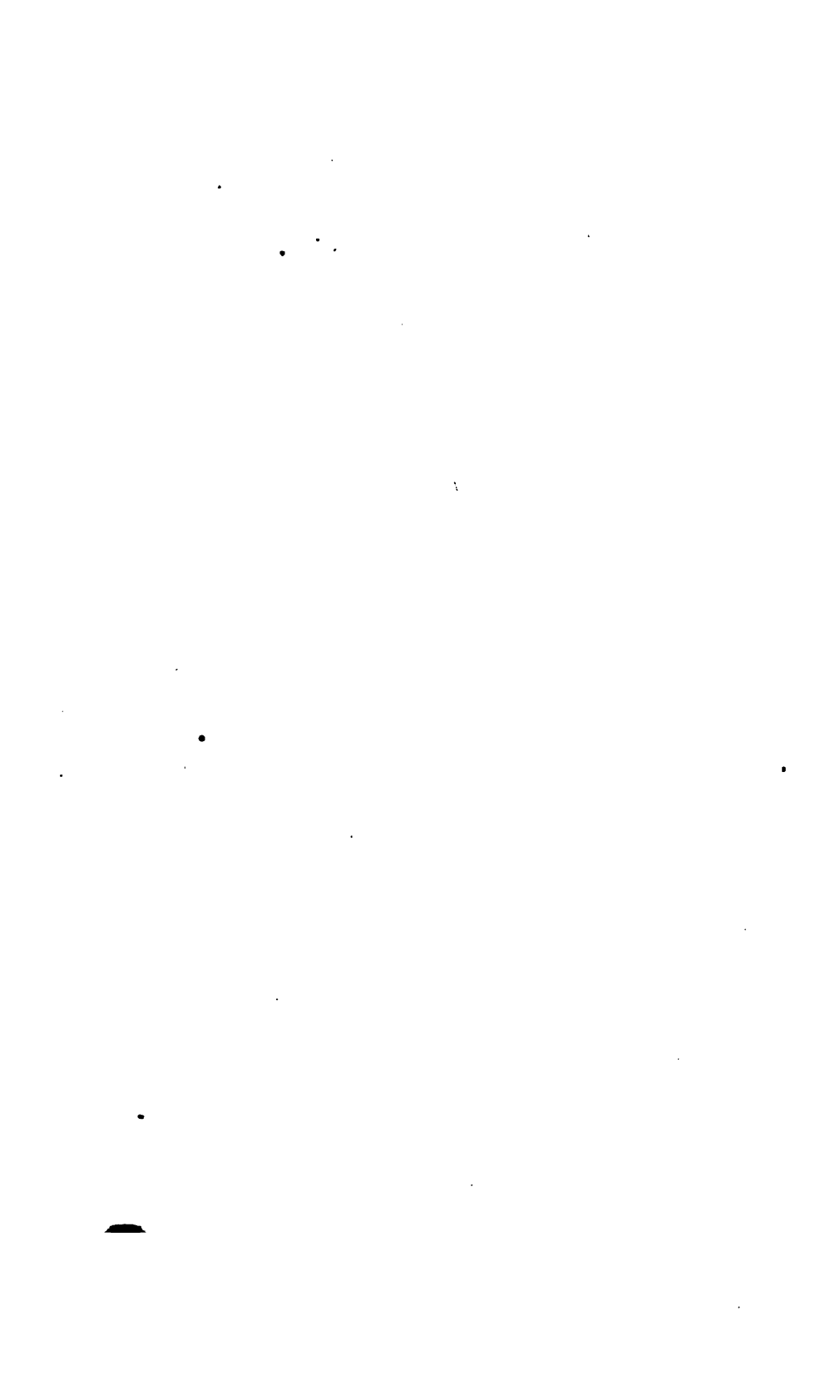
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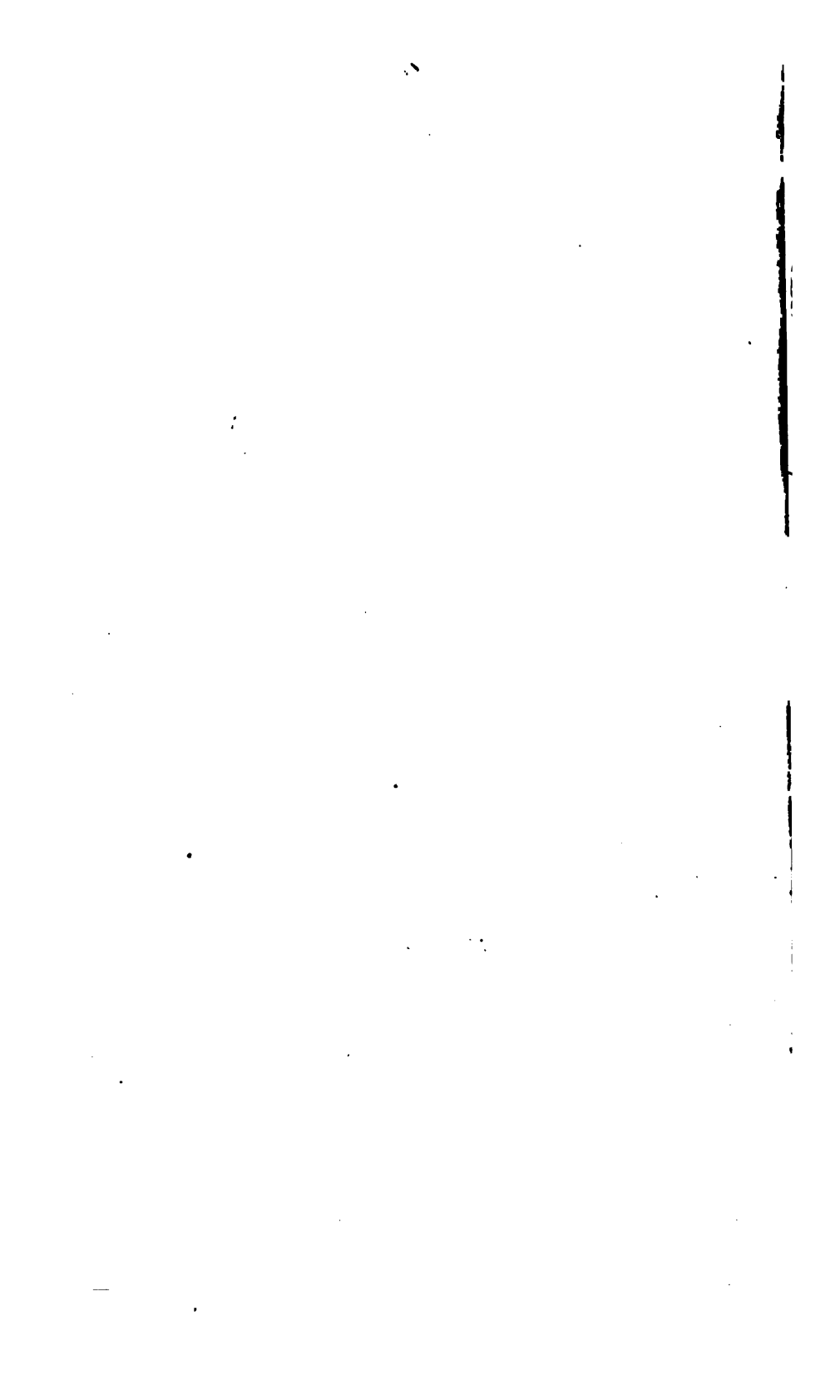
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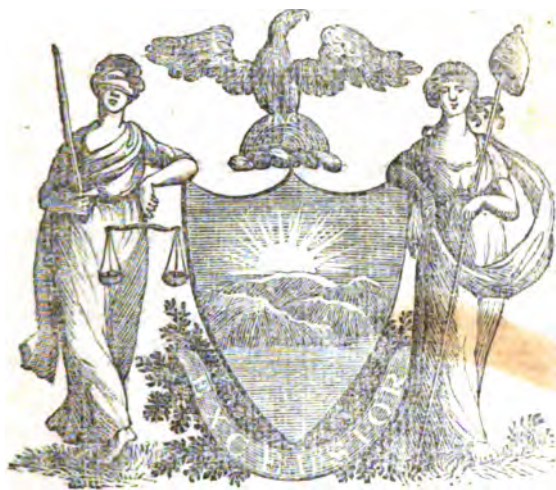






William H. Moore
L A W S
OF THE
State of New-York.

PUBLISHED BY AUTHORITY.



IN TWO VOLUMES.

VOL. I.

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THE EDITORS of this Edition of the *LAWS* regret that the Publication has not been quite so early as was expected. They believe it was impossible to have been accomplished with the utmost diligence by the time originally contemplated, and the delay arose from circumstances which were unavoidable.

IT was found inconvenient to comprize in one Volume all the *PUBLIC ACTS*—The Editors have therefore thought proper to throw into the Second Volume the Acts for *dividing the State into Counties and Towns*, and the Act for *regulating the Fees of the several Officers and Ministers of Justice*—These Acts are very lengthy, and two of them not of a permanent nature—It appeared therefore not injurious to the Plan of the Publication to separate them from the general and permanent Laws.

THE Editors flatter themselves that the mechanical part of the Work will be found to be executed in a manner that will entitle it to the Public approbation.

ALBANY, January 20, 1802.



THE
CONSTITUTION
OF THE
STATE OF NEW-YORK.

In Convention of the Representatives of the State
of NEW-YORK.

KINGSTON, 20th April, 1777.

WHEREAS the many tyrannical and oppressive usurpations of the king and parliament of Great-Britain, on the rights and liberties of the people of the American colonies, had reduced them to the necessity of introducing a government by congresses and committees, as temporary expedients, and to exist no longer than the grievances of the people should remain without redress.

Government by Congresses and Committees.

AND WHEREAS the congress of the colony of New-York, did, on the thirty-first day of May, now last past, resolve as follows, viz.

“ WHEREAS the present government of this colony, by congress and committees, was instituted while the former government under the crown of Great-Britain, existed in full force; and was established for the sole purpose of opposing the usurpation of the British parliament, and was intended to expire on a reconciliation with Great-Britain, which it was then apprehended would soon take place, but is now considered as remote and uncertain.

Its object temporary.

“ AND WHEREAS many and great inconveniences attend the said mode of government by congress and committees, as of necessity, in many instances, legislative, judicial and executive powers have been vested therein, especially since the dissolution of the former government, by the abdication of the late governor, and the exclusion of this colony from the protection of the king of Great-Britain.

Its inconveniences.

“ AND WHEREAS the continental congress did resolve as followeth, to wit,

Recital, and

“ WHEREAS his Britannic majesty, in conjunction with the lords and commons of Great-Britain, has, by a late act of parliament, excluded the inhabitants of these united colonies from the protection of his crown. And whereas no answers whatever, to the humble petition of the colonies for redress of grievances and recon-

The CONSTITUTION of

ciliation with Great-Britain, has been, or is likely to be given; but the whole force of that kingdom, aided by foreign mercenaries, is to be exerted for the destruction of the good people of these colonies. And whereas it appears absolutely irreconcilable to reason and good conscience, for the people of these colonies, now to take the oaths and affirmations necessary for the support of any government under the crown of Great-Britain, and it is necessary that the exercise of every kind of authority under the said crown, should be totally suppressed, and all the powers of government exerted under the authority of the people of the colonies, for the preservation of internal peace, virtue and good order, as well as for the defence of our lives, liberties, and properties, against the hostile invasions and cruel depredations of our enemies : Therefore,

Resolution of
the General
Congress, re-
specting
the institu-
tion of new
governments.

RESOLVED, That it be recommended to the respective assemblies and conventions of the united colonies, where no government sufficient to the exigences of their affairs has been hitherto established, to adopt such government as shall, in the opinion of the representatives of the people, best conduce to the happiness and safety of their constituents in particular, and America in general.

Powers of the
Provincial
Congress in-
adequate.

“AND WHEREAS doubts have arisen, whether this congress are invested with sufficient power and authority to deliberate and determine on so important a subject as the necessity of erecting and constituting a new form of government and internal police, to the exclusion of all foreign jurisdiction, dominion and controul whatever. And whereas it appertains of right solely to the people of this colony to determine the said doubts : Therefore,

Recommendation to elect deputies with adequate powers :

“RESOLVED, That it be recommended to the electors in the several counties in this colony, by election in the manner and form prescribed for the election of the present congress, either to authorise (in addition to the powers vested in this congress) their present deputies, or others in the stead of their present deputies, or either of them, to take into consideration the necessity and propriety of instituting such new government as in and by the said resolution of the continental congress is described and recommended : And if the majority of the counties, by their deputies in provincial congress, shall be of opinion that such new government ought to be instituted and established, then to institute and establish such a government as they shall deem best calculated to secure the rights, liberties, and happiness of the good people of this colony : and to continue in force until a future peace with Great-Britain shall render the same unnecessary. And,

Time & place of meeting.

“RESOLVED, That the said elections in the several counties, ought to be had on such day, and at such

place or places, as by the committee of each county respectively shall be determined. And it is recommended to the said committees, to fix such early days for the said elections, as that all the deputies to be elected have sufficient time to repair to the city of New-York by the second Monday in July next ; on which day all the said deputies ought punctually to give their attendance.

“ AND WHEREAS the object of the foregoing resolutions is of the utmost importance to the good people of this colony ;

¶ RESOLVED, That it be, and it is hereby earnestly recommended to the committees, freeholders and other electors in the different counties in this colony, diligently to carry the same into execution.”

AND WHEREAS the good people of the said colony, in pursuance of the said resolution, and reposing special trust and confidence in the members of this convention, have appointed, authorised, and empowered them for the purposes, and in the manner, and with the powers in and by the said resolve specified, declared and mentioned.

Appointment
of this Con-
vention.

AND WHEREAS the delegates of the United American States, in general congress convened, did on the fourth day of July now last past, solemnly publish and declare, in the words following, viz.

“ WHEN in the course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth, the separate and equal station to which the laws of nature and of nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

Proceedings
of the General
Congress :

“ We hold these truths to be self-evident, that all men are created equal ; that they are endowed by their Creator with certain unalienable rights ; that among these are, life, liberty and the pursuit of happiness. That to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed ; that whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute new government, laying its foundation on such principles, and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness. Prudence indeed will dictate, that governments long established should not be changed for light and transient causes, and accordingly all experience hath shewn, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same object, evinces a

Reasons
thereof :

design to reduce them under absolute despotism, it is their right, it is their duty, to throw off such government, and to provide new guards for their future security. Such has been the patient sufferance of these colonies; and such is now the necessity which constrains them to alter their former system of government. The history of the present king of Great-Britain is a history of repeated injuries and usurpations, all having in direct object, the establishment of an absolute tyranny over these states. To prove this, let facts be submitted to a candid world.

Grievances.

"He has refused his assent to laws, the most wholesome and necessary for the public good.

"He has forbidden his governors to pass laws of immediate and pressing importance, unless suspended in their operation till his assent should be obtained; and when so suspended, he has utterly neglected to attend to them.

"He has refused to pass other laws for the accommodation of large districts of people, unless those people would relinquish the right of representation in the legislature; a right inestimable to them, and formidable to tyrants only.

"He has called together legislative bodies at places unusual, uncomfortable, and distant from the depository of their public records, for the sole purpose of fatiguing them into compliance with his measures.

"He has dissolved representative houses repeatedly, for opposing with manly firmness his invasions on the rights of the people.

"He has refused for a long time, after such dissolutions, to cause others to be elected; whereby the legislative powers, incapable of annihilation, have returned to the people at large, for their exercise; the state remaining in the mean time exposed to all the dangers of invasion from without, and convulsions within.

"He has endeavored to prevent the population of these states; for that purpose obstructing the laws for naturalization of foreigners; refusing to pass others to encourage their migrations hither, and raising the conditions of new appropriations of lands.

"He has obstructed the administration of justice, by refusing his assent to laws for establishing judiciary powers.

"He has made judges dependent on his will alone, for the tenure of their offices, and the amount and payment of their salaries.

"He has erected a multitude of new offices, and sent hither swarms of officers to harass our people, and eat out their substance.

"He has kept among us, in times of peace, standing armies, without the consent of our legislatures.

" He has affected to render the military independent of, and superior to, the civil power.

" He has combined with others to subject us to a jurisdiction foreign to our constitution, and unacknowledged by our laws ; giving his assent to their acts of pretended legislation :

" For quartering large bodies of troops among us ?

" For protecting them, by a mock trial, from punishment for any murders they should commit on the inhabitants of these states :

" For cutting off our trade with all parts of the world :

" For imposing taxes on us without our consent :

" For depriving us in many cases, of the benefits of trial by jury :

" For transporting us beyond seas to be tried for pretended offences :

" For abolishing the free system of English laws in a neighbouring province, establishing therein an arbitrary government, and enlarging its boundaries, so as to render it at once an example and fit instrument for introducing the same absolute rule into these colonies :

" For taking away our charters, abolishing our most valuable laws, and altering fundamentally the forms of our governments :

" For suspending our own legislatures, and declaring themselves invested with power to legislate for us in all cases whatsoever.

" He has abdicated government here, by declaring us out of his protection, and waging war against us.

" He has plundered our seas, ravaged our coasts, burnt our towns, and destroyed the lives of our people.

" He is, at this time, transporting large armies of foreign mercenaries to complete the works of death, desolation and tyranny, already begun with circumstances of cruelty and perfidy, scarcely paralleled in the most barbarous ages, and totally unworthy the head of a civilized nation.

" He has constrained our fellow citizens, taken captive on the high seas, to bear arms against their country, to become the executioners of their friends and brethren, or to fall themselves by their hands.

" He has excited domestic insurrections amongst us, and has endeavored to bring on the inhabitants of our frontiers the merciless Indian savages, whose known rule of warfare is an undistinguished destruction of all ages, sexes and conditions.

" In every stage of these oppressions, we have petitioned for redress in the most humble terms: our repeated petitions have been answered only by repeated injury. A prince whose character is thus marked by every act

The CONSTITUTION of

which may define a tyrant, is unfit to be the ruler of a free people.

"Nor have we been wanting in attentions to our British brethren. We have warned them from time to time of attempts by their legislature to extend an unwarrantable jurisdiction over us. We have reminded them of the circumstances of our emigration and settlement here. We have appealed to their native justice and magnanimity, and we have conjured them by the ties of our common kindred, to disavow these usurpations, which would inevitably interrupt our connection and correspondence. They too have been deaf to the voice of justice and of conciguinity. We must therefore acquiesce in the necessity which denounces our separation, and hold them as we held the rest of mankind, enemies in war; in peace, friends.

Declaration
of
Independence

"We, therefore, the representatives of the United States of America, in general congress assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, do, in the name, and by the authority of the good people of these colonies, solemnly publish and declare, That these united colonies are, and of right ought to be, FREE AND INDEPENDENT STATES; that they are absolved from all allegiance to the British crown, and that all political connection between them and the state of Great-Britain, is, and ought to be, totally dissolved; and that as free and independent states, they have full power to levy war, conclude peace, contract alliances, establish commerce, and to do all other acts and things which independent states may of right do. And for the support of this declaration, with a firm reliance on the protection of Divine Providence, we mutually pledge to each other, our lives, our fortunes, and our sacred honour."

Approved

AND WHEREAS this convention having taken this declaration into their most serious consideration, did on the ninth day of July last past, unanimously resolve, That the reasons assigned by the continental congress, for declaring the united colonies free and independent states, are cogent and conclusive: And that while we lament the cruel necessity which has rendered that measure unavoidable, we approve the same, and will, at the risk of our lives and fortunes, join with the other colonies in supporting it.

Powers of the
Convention.

By virtue of which several acts, declarations and proceedings, mentioned and contained in the afore-recited resolves or resolutions of the general congress of the United American States, and of the congresses or conventions of this state, all power whatever therein hath reverted to the people thereof, and this convention hath by their suffrages and free choice been appointed, and among other

things authorized to institute and establish such a government as they shall deem best calculated to secure the rights and liberties of the good people of this state, most conducive of the happiness and safety of their constituents in particular, and of America in general :

I. This convention, therefore, in the name and by the authority of the good people of this state, DOTH ORDAIN, DETERMINE AND DECLARE, That no authority shall, on any pretence whatever, be exercised over the people, or members of this state, but such as shall be derived from and granted by them.

All authority derived from the people.

II. This convention doth further, in the name and by the authority of the good people of this state, ORDAIN, DETERMINE AND DECLARE, That the supreme legislative power within this state, shall be vested in two separate and distinct bodies of men ; the one to be called, the Assembly of the state of New-York ; the other to be called, the Senate of the state of New-York : who together shall form the Legislature, and meet once at least in every year for the dispatch of business.

Legislative power.

III. AND WHEREAS laws inconsistent with the spirit of this constitution, or with the public good, may be hastily and unadvisedly passed : BE IT ORDAINED, That the governor for the time being, the chancellor and the judges of the supreme court, or any two of them, together with the governor, shall be, and hereby are, constituted a council to revise all bills about to be passed into laws by the legislature. And for that purpose shall assemble themselves, from time to time, when the legislature shall be convened ; for which, nevertheless, they shall not receive any salary or consideration under any pretence whatever. And that all bills which have passed the senate and assembly shall, before they become laws, be presented to the said council for their revision and consideration ; and if upon such revision and consideration, it should appear improper to the said council, or a majority of them, that the said bill should become a law of this state, that they return the same, together with their objections thereto in writing, to the senate, or house of assembly, in whichever the same shall have originated, who shall enter the objections sent down by the council, at large, in their minutes, and proceed to re-consider the said bill. But if after such re-consideration, two thirds of the said senate, or house of assembly, shall, notwithstanding the said objections, agree to pass the same, it shall, together with the objections, be sent to the other branch of the legislature, where it shall also be re-considered, and if approved by two thirds of the members present, shall be a law.

Council of Revision.

And in order to prevent any unnecessary delays, BE IT FURTHER ORDAINED, that if any bill shall not be returned by the council, within ten days after it

Bills to become laws if not returned in ten days.

The CONSTITUTION of

shall have been presented, the same shall be a law, unless the legislature shall, by their adjournment, render a return of the said bill within ten days impracticable; in which case the bill shall be returned on the first day of the meeting of the legislature, after the expiration of the said ten days.

The Assembly IV. That the assembly shall consist of at least seventy members, to be annually chosen in the several counties, in the proportions following, viz.

Representation apportioned to each county.

For the city and county of New-York,	Nine.
The city and county of Albany,	Ten.
The county of Dutchess,	Seven.
The county of Westchester,	Six.
The county of Ulster,	Six.
The county of Suffolk,	Five.
The county of Queens,	Four.
The county of Orange,	Four.
The county of Kings,	Two.
The county of Richmond,	Two.
The county of Tryon,	Six.
The county of Charlotte,	Four.
The county of Cumberland,	Three.
The county of Gloucester,	Two.

Census, when and how to be taken.

V. That as soon after the expiration of seven years, subsequent to the termination of the present war, as may be, a census of the electors and inhabitants in this state be taken, under the direction of the legislature. And if on such census it shall appear, that the number of representatives in assembly from the said counties, is not justly proportioned to the number of electors in the said counties respectively, that the legislature do adjust and apportion the same by that rule. And further; that once in every seven years, after the taking of the said first census, a just account of the electors resident in each county shall be taken; and if it shall thereupon appear that the number of electors in any county, shall have increased or diminished one or more seventieth parts of the whole number of electors, which on the said first census shall be found in this state, the number of representatives for such county shall be increased or diminished accordingly, that is to say, one representative for every seventieth part as aforesaid.

Ballot, opinion of voting by.

VI. AND WHEREAS an opinion hath long prevailed among divers of the good people of this state, that voting at elections by ballot, would tend more to preserve the liberty and equal freedom of the people, than voting *visa voce*: To the end therefore, that a fair experiment be made, which of those two methods of voting is to be preferred:

After the war experiment to be made:

BE IT ORDAINED, That as soon as may be, after the termination of the present war, between the United States of America and Great-Britain, an act or acts be

passed by the legislature of this state, for causing all elections thereafter to be held in this state for senators and representatives in assembly, to be by ballot, and directing the manner in which the same shall be conducted. AND WHEREAS it is possible, that after all the care of the legislature, in framing the said act or acts, certain inconveniences and mischiefs, unforeseen at this day, may be found to attend the said mode of electing by ballot :

IT IS FURTHER ORDAINED, That if after a full and fair experiment shall be made of voting by ballot aforesaid, the same shall be found less conducive to the safety or interest of the state, than the method of voting *via voce*, it shall be lawful and constitutional for the legislature to abolish the same ; Provided two thirds of the members present in each house respectively shall concur therein. And further, that during the continuance of the present war, and until the legislature of this state shall provide for the election of senators, and representatives in assembly by ballot, the said elections shall be made *via voce*.

To be abolished if found inconvenient.

VII. That every male inhabitant of full age, who shall have personally resided within one of the counties of this state, for six months immediately preceding the day of election, shall at such election, be entitled to vote for representatives of the said county in assembly ; if during the time aforesaid, he shall have been a freeholder, possessing a freehold of the value of twenty pounds, within the said county, or have rented a tenement therein of the yearly value of forty shillings, and been rated and actually paid taxes to this state : *Provided always*, That every person who now is a freeman of the city of Albany, or who was made a freeman of the city of New-York, on or before the fourteenth day of October, in the year of our Lord one thousand seven hundred and seventy-five, and shall be actually and usually resident in the said cities respectively, shall be entitled to vote for representatives in assembly within his said place of residence.

Qualifications of electors.

VIII. That every elector, before he is admitted to vote, shall if required by the returning officer or either of the inspectors, take an oath, or if of the people called quakers, an affirmation, of allegiance to the state.

Oath of allegiance.

IX. That the assembly thus constituted, shall chuse their own speaker, be judges of their own members, and enjoy the same privileges, and proceed in doing business, in like manner as the assemblies of the colony of New-York of right formerly did ; and that a majority of the said members shall, from time to time, constitute a house to proceed upon business.

Privileges of Members of Assembly.

A quorum.

X. And this convention doth further, in the name, and by the authority of the good people of this state, ORDAIN, DETERMINE AND DECLARE, That the senate of the State of New-York, shall consist of twenty-four freeholders,

Number of Senators, and by whom chosen.

to be chosen out of the body of the freeholders, and that they be chosen by the freeholders of this state, possessed of freeholds of the value of one hundred pounds, over and above all debts charged thereon.

Their term of election, and rotation in office.

XI. That the members of the senate be elected for four years, and immediately after the first election, they be divided by lot into four classes, six in each class, and numbered, one, two, three, and four; that the seats of the members of the first class shall be vacated at the expiration of the first year, the second class the second year, and so on continually, to the end that the fourth part of the senate, as nearly as possible, may be annually chosen.

Manner of choosing.

XII. That the election of senators shall be after this manner; that so much of this state as is now parcelled into counties, be divided into four great districts; the Southern district to comprehend the city and county of New-York, Suffolk, Westchester, Kings, Queens, and Richmond counties; the Middle district to comprehend the counties of Dutchess, Ulster, and Orange; the Western district the city and county of Albany, and Tryon county; and the Eastern district, the counties of Charlotte, Cumberland and Gloucester. That the senators shall be elected by the freeholders of the said districts, qualified as aforesaid, in the proportions following, to wit; in the Southern district, nine; in the Middle district, six; in the Western district, six; and in the Eastern district, three. AND BE IT

Census, and apportionment of the Senators.

ORDAINED, That a census shall be taken as soon as may be, after the expiration of seven years from the termination of the present war, under the direction of the legislature; And if on such census it shall appear, that the number of senators is not justly proportioned to the several districts, that the legislature adjust the proportion as near as may be, to the number of freeholders qualified as aforesaid, in each district. That when the number of electors within any of the said districts shall have increased one twenty-fourth part of the whole number of electors, which by the said census shall be found to be in this state, an additional senator shall be chosen by the electors of such district. That a majority of the number of senators to be chosen as aforesaid, shall be necessary to constitute a senate, sufficient to proceed upon business, and that the senate shall, in like manner with the assembly, be the judges of its own members. AND BE IT ORDAINED, That it shall be in the power of the future legislatures of this state, for the convenience and advantage of the good people thereof, to divide the same into such further and other counties and districts, as shall to them appear necessary.

A quorum.

To be judges of their own Members.

Other counties and districts may be erected

No person to be disfranchised but by law

XIII. And this convention doth further, in the name and by the authority of the good people of this state, ORDAIN, DETERMINE AND DECLARE, That no member of this state shall be disfranchised or deprived

of any of the rights or privileges secured to the subjects of this state, by this constitution, unless by the law of the land, or the judgment of his peers.

XIV. That neither the assembly or the senate shall have power to adjourn themselves for any longer time than two days, without the mutual consent of both.

No adjournment of either house for more than two days but by mutual consent.
Conference between them

XV. That whenever the assembly and senate disagree, a conference shall be held in the presence of both, and be managed by committees to be by them respectively chosen by ballot. That the doors both of the senate and assembly, shall at all times be kept open to all persons, except when the welfare of the state shall require their debates to be kept secret. And the journals of all their proceedings shall be kept in the manner heretofore accustomed by the general assembly of the colony of New-York, and except such parts as they shall as aforesaid respectively determine not to make public, be from day to day (if the business of the legislature will permit) published.

Doors to be open, and

Journals how kept and published.

XVI. It is nevertheless provided, that the number of senators shall never exceed one hundred, nor the number of the assembly three hundred; but that whenever the number of senators shall amount to one hundred, or of the assembly to three hundred, then and in such case the legislature shall from time to time hereafter, by laws for that purpose, apportion and distribute the said one hundred senators, and three hundred representatives, among the great districts and counties of this state, in proportion to the number of their respective electors, so that the representation of the good people of this state, both in the senate and assembly, shall for ever remain proportionate and adequate.

Number of the Senate and Assembly limited.

XVII. And this convention doth further, in the name and by the authority of the good people of this state, ORDAIN, DETERMINE, AND DECLARE, that the supreme executive power, and authority of this state, shall be vested in a governor; and that statelily once in every three years, and as often as the seat of government shall become vacant, a wise and discreet freeholder of this state shall be by ballot elected governor, by the freeholders of this state, qualified as before described to elect senators; which elections shall be always held at the times and places of choosing representatives in assembly for each respective county; and that the person who hath the greatest number of votes within the said state shall be the governor thereof.

Executive power vested in a Governor

When & how to be chosen.

XVIII. That the governor shall continue in office three years, and shall by virtue of his office, be general and commander in chief of all the militia, and admiral of the navy of this state; that he shall have power to convene the assembly and senate on extraordinary occasions,

His power

to prorogue them from time to time, provided such prorogations shall not exceed sixty days in the space of any one year; and at his discretion to grant reprieves and pardons to persons convicted of crimes, other than treason or murder, in which he may suspend the execution of the sentence, until it shall be reported to the legislature at their subsequent meeting; and they shall either pardon or direct the execution of the criminal, or grant a further reprieve.

And duty.

XIX. That it shall be the duty of the governor to inform the legislature at every session, of the condition of the state, so far as may respect his department; to recommend such matters to their consideration as shall appear to him to concern its good government, welfare and prosperity; to correspond with the continental congress, and other states; to transact all necessary business with the officers of government, civil and military; to take care that the laws are faithfully executed to the best of his ability; and to expedite all such measures as may be resolved upon by the legislature.

Lt. Governor,

To be President of the Senate.

XX. That a lieutenant-governor shall, at every election of a governor, and as often as the lieutenant-governor shall die, resign, or be removed from office, be elected in the same manner with the governor, to continue in office until the next election of a governor; and such lieutenant-governor shall, by virtue of his office, be president of the senate, and, upon an equal division, have a casting voice in their decisions, but not vote on any other occasion.

His further power & duty.

And in case of the impeachment of the governor, or his removal from office, death, resignation, or absence from the state, the lieutenant-governor shall exercise all the power and authority appertaining to the office of governor, until another be chosen, or the governor absent or impeached, shall return or be acquitted: Provided, That where the governor shall, with the consent of the legislature, be out of the state, in time of war, at the head of a military force thereof, he shall still continue in his command of all the military force of this state, both by sea and land.

In his absence a President to be chosen by the Senate.

XXI. That whenever the government shall be administered by the lieutenant-governor, or he shall be unable to attend as president of the senate, the senators shall have power to elect one of their own members to the office of president of the senate, which he shall exercise *pro hac vice*; And if, during such vacancy of the office of governor, the lieutenant-governor shall be impeached, displaced, resign, die, or be absent from the state, the president of the senate shall, in like manner as the lieutenant-governor, administer the government, until others shall be elected by the suffrage of the people at the succeeding election.

His power and duty.

XXH. And this convention doth further, in the name *Treasurer.*
and by the authority of the good-people of this state, OR-
DAIN, DETERMINE AND DECLARE, That the
treasurer of this state shall be appointed by act of the le-
gislation, to originate with the assembly: Provided, That
he shall not be elected out of either branch of the legislature.

XXIII. That all officers, other than those who by this
constitution are directed to be otherwise appointed, shall
be appointed in the manner following, to wit; The assem-
bly shall, once in every year, openly nominate and ap-
point one of the senators from each great district, which
senators shall form a council for the appointment of the
said officers, of which the governor for the time being, or
the lieutenant-governor, or the president of the senate,
when they shall respectively administer the government,
shall be president, and have a casting voice, but no other
vote; and with the advice and consent of the said council
shall appoint all the said officers; and that a majority of
the said council be a quorum; And further, the said sena-
tors shall not be eligible to the said council for two years
successively.

*Council of
Appointment.*

XXIV. That all military officers be appointed during
pleasure; that all commissioned officers, civil and milita-
ry, be commissioned by the governor, and that the chan-
cellor, the judges of the supreme court and first judge of
the county court in every county, hold their offices during
good behaviour, or until they shall have respectively at-
tained the age of sixty years.

*Tenure of
certain offices.*

XXV. That the chancellor and judges of the supreme
court shall not at the same time hold any other office, ex-
cepting that of delegate to the general congress, upon
special occasions; and that the first judges of the county
courts in the several counties, shall not at the same time
hold any other office excepting that of senator, or delegate
to the general congress; But if the chancellor, or either
of the said judges be elected or appointed to any other of-
fice, excepting as is before excepted, it shall be at his op-
tion in which to serve.

*Tenure of
certain judi-
cial offices.*

XXVI. That sheriffs and coroners be annually appoint-
ed; and that no person shall be capable of holding either
of the said offices more than four years successively, nor
the sheriff of holding any other office at the same time.

*Sheriffs and
Coroners.*

XXVII. AND BE IT FURTHER ORDAINED, That
the register and clerks in chancery be appointed by the
chancellor; the clerks of the supreme court by the judges
of the said court; the clerk of the court of probates, by
the judge of the said court; and the register and marshal of
the court of admiralty, by the judge of the admiralty. The
said marshal, registers and clerks to continue in office dur-
ing the pleasure of those by whom they are to be ap-
pointed, as aforesaid.

*Registers,
Clerks and
Marshal, by
whom appoint-
ed.*

Attornies, Solicitors and Counsellors, by whom appointed.

And all attornies, folicitors and counsellors at law, hereafter to be appointed, be appointed by the court, and licensed by the first judge of the court in which they shall respectively plead or practice ; and be regulated by the rules and orders of the said courts.

Duration of offices.

XXVIII. AND BE IT FURTHER ORDAINED, That where by this constitution the duration of any office shall not be ascertained, such office shall be construed to be held during the pleasure of the council of appointment : Provided, that new commissions shall be issued to judges of the county courts (other than to the first judge) and to justices of the peace, once at the least in every three years.

Town Officers

XXIX. That town clerks, supervisors, assessors, constables and collectors, and all other officers heretofore eligible by the people, shall always continue to be so eligible, in the manner directed by the present or future acts of legislature.

Loan Officers, County Treasurers, and Supervisor's Clerks.

That loan officers, county treasurers, and clerks of the supervisors, continue to be appointed in the manner directed by the present or future acts of the legislature.

Delegates to Congress.

XXX. That delegates to represent this state in the general congress of the United States of America, be annually appointed as follows, to wit : The senate and assembly shall each openly nominate as many persons as shall be equal to the whole number of delegates to be appointed ; after which nomination, they shall meet together, and those persons named in both lists shall be delegates ; and out of those persons whose names are not on both lists, one half shall be chosen by the joint ballot of the senators and members of assembly, so met together as aforesaid.

Style of laws, and form of process.

XXXI. That the stile of all laws shall be as follows, to wit : *Be it enacted by the people of the state of New-York, represented in senate and assembly.* And that all writs and other proceedings shall run in the name of, *The people of the state of New-York*, and be tested in the name of the chancellor or chief judge of the court from whence they shall issue.

Court for the trial of impeachments and the correction of errors.

XXXII. And this convention doth further, in the name and by the authority of the good people of this state, ORDAIN, DETERMINE AND DECLARE, That a court shall be instituted for the trial of impeachments, and the correction of errors, under the regulations which shall be established by the legislature ; and to consist of the president of the senate for the time being, and the senators, chancellor, and judges of the supreme court, or the major part of them ; except that when an impeachment shall be prosecuted against the chancellor, or either of the judges of the supreme court, the person so impeached shall be suspended from exercising his office, until his acquittal : And in like manner, when an appeal from a decree in equity shall be heard, the chancellor shall inform the court

of the reasons of his decree, but shall not have a voice in the final sentence. And if the cause to be determined shall be brought up by writ of error on a question of law, on a judgment in the supreme court, the judges of the court shall assign the reasons of such their judgment, but shall not have a voice for its affirmance or reversal.

XXXIII. That the power of impeaching all officers of the state, for mal and corrupt conduct in their respective offices, be vested in the representatives of the people in assembly; but that it shall always be necessary that two-third parts of the members present shall consent to and agree in such impeachment. That previous to the trial of every impeachment, the members of the said court shall respectively be sworn, truly and impartially to try and determine the charge in question, according to evidence; and that no judgment of the said court shall be valid, unless it shall be assented to by two-third parts of the members then present; nor shall it extend further than to removal from office, and disqualification to hold or enjoy any place of honour, trust or profit, under this state. But the party so convicted, shall be, nevertheless, liable and subject to indictment, trial, judgment and punishment, according to the laws of the land.

XXXIV. AND IT IS FURTHER ORDAINED, That in every trial on impeachment or indictment for crimes or misdemeanors, the party impeached or indicted, shall be allowed counsel, as in civil actions.

XXXV. And this convention doth further, in the name and by the authority of the good people of this state, ORDAIN, DETERMINE AND DECLARE, That such parts of the common law of England, and of the statute law of England and Great-Britain, and of the acts of the legislature of the colony of New-York, as together did form the law of the said colony on the nineteenth day of April, in the year of our Lord, one thousand seven hundred and seventy-five, shall be and continue the law of this state; subject to such alterations and provisions as the legislature of this state shall, from time to time, make concerning the same. That such of the said acts as are temporary, shall expire at the times limited for their duration respectively. That all such parts of the said common law, and all such of the said statutes, and acts aforesaid, or parts thereof, as may be construed to establish or maintain any particular denomination of christians or their ministers, or concern the allegiance heretofore yielded to, and the supremacy, sovereignty, government or prerogatives, claimed or exercised by the king of Great-Britain and his predecessors, over the colony of New-York and its inhabitants, or are repugnant to this constitution, be, and they hereby are abrogated and rejected. And this convention doth further ordain,

That the resolves or resolutions of the congresses of the colony of New-York, and of the convention of the state of New-York, now in force, and not repugnant to the government established by this constitution, shall be considered as making part of the laws of this state; subject, nevertheless, to such alterations and provisions, as the legislature of this state may from time to time make, concerning the same.

Grants by the King after a certain period void.

Charter rights and former grants preserved.

XXXVI. AND BE IT FURTHER ORDAINED, That all grants of land within this state, made by the king of Great-Britain, or persons acting under his authority, after the fourteenth day of October, one thousand seven hundred and seventy-five, shall be null and void: But that nothing in this constitution contained shall be construed to affect any grants of land within this state, made by the authority of the said king or his predecessors, or to annul any charters to bodies politic, by him or them, or any of them, made prior to that day. And that none of the said charters shall be adjudged to be void by reason of any non-user or mis-user of any of their respective rights or privileges, between the nineteenth day of April, in the year of our Lord one thousand seven hundred and seventy-five, and the publication of this constitution. And further, That all such of the officers described in the said charters respectively, as by the terms of the said charters, were to be appointed by the governor of the colony of New-York, with or without the advice and consent of the council of the said king, in the said colony, shall henceforth be appointed by the council established by this constitution, for the appointment of officers in this state, until otherwise directed by the legislature.

Purchases of lands from the Indians.

XXXVII. AND WHEREAS it is of great importance to the safety of this state, that peace and amity with the Indians within the same, be at all times supported and maintained. AND WHEREAS the frauds too often practised towards the said Indians, in contracts made for their lands, have in divers instances been productive of dangerous discontents and animosities; BE IT ORDAINED, That no purchases or contracts for the sale of lands, made since the fourteenth day of October, in the year of our Lord, one thousand seven hundred and seventy-five, or which may hereafter be made with or of the said Indians, within the limits of this state, shall be binding on the said Indians, or deemed valid, unless made under the authority, and with the consent of the legislature of this state.

XXXVIII. AND WHEREAS we are required by the benevolent principles of rational liberty, not only to expel civil tyranny, but also to guard against that spiritual oppression and intolerance, wherewith the bigotry and ambition of weak and wicked priests and princes have scourged

ed mankind: This convention doth further, in the name and by the authority of the good people of this state, **ORDAIN, DETERMINE AND DECLARE**, That the free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall for ever hereafter be allowed within this state to all mankind. *Free exercise of Religion.* **Provided**, That the liberty of conscience hereby granted, shall not be so construed, as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this state.

XXXIX. AND WHEREAS the ministers of the gospel are, by their profession, dedicated to the service of God and the cure of souls, and ought not to be diverted from the great duties of their function; therefore no minister of the gospel, or priest of any denomination whatsoever, shall at any time hereafter, under any pretence or description whatever, be eligible to, or capable of holding any civil or military office or place within this state. *No Minister or Priest to hold any office.*

XL. AND WHEREAS it is of the utmost importance to the safety of every state, that it should always be in a condition of defence; and it is the duty of every man who enjoys the protection of society, to be prepared and willing to defend it: This convention therefore, in the name and by the authority of the good people of this state, doth **ORDAIN, DETERMINE AND DECLARE**, That the militia of this state, at all times hereafter, as well in peace as in war, shall be armed and disciplined, and in readiness for service. That all such of the inhabitants of this state, being of the people called Quakers, as from scruples of conscience may be averse to the bearing of arms, be therefrom excused by the legislature; and do pay to the state such sums of money in lieu of their personal service, as the same may, in the judgment of the legislature, be worth: And that a proper magazine of warlike stores, proportionate to the number of inhabitants, be for ever hereafter, at the expence of this state, and by acts of the legislature, established, maintained, and continued in every county in this state. *Militia.* *Magazines.*

XLI. And this convention doth further ORDAIN, DETERMINE AND DECLARE, in the name and by the authority of the good people of this state, That trial by jury, in all cases in which it hath heretofore been used in the colony of New-York, shall be established, and remain inviolate for ever. And that no acts of attainder shall be passed by the legislature of this state, for crimes other than those committed before the termination of the present war; and that such acts shall not work a corruption of blood. And further, that the legislature of this state shall at no time hereafter, institute any new court or courts, but such as shall proceed according to the course of the common law. *Trial by jury.* *New courts.*

Naturalization

XLII. And this convention doth further, in the name and by the authority of the good people of this state, **ORDAIN, DETERMINE AND DECLARE**, That it shall be in the discretion of the legislature to naturalize all such persons, and in such manner as they shall think proper; provided all such of the persons so to be by them naturalized, as being born in parts beyond sea, and out of the United States of America, shall come to settle in, and become subjects of this state, shall take an oath of allegiance to this state, and abjure and renounce all allegiance and subjection to all and every foreign king, prince, potentate and state, in all matters ecclesiastical as well as civil.

By order,

LEONARD GANSEVOORT,

PRESID. P. Y.

THE
CONSTITUTION
OF THE
United States of America,
WITH THE
AMENDMENTS *thereto.*

CONSTITUTION.

WE, The People of the United States, in order to form a more perfect Union, establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, DO ORDAIN AND ESTABLISH this CONSTITUTION for the UNITED STATES OF AMERICA.

ARTICLE I.

SEC. 1. ALL legislative powers herein granted, shall be vested in a congress of the United States, which shall consist of a senate and house of representatives. Of the legislative power.

SEC. 2. The house of representatives shall be composed of members chosen every second year by the people of the several states; and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature. Of the House of Representatives.

No person shall be a representative who shall not have attained to the age of twenty-five years; and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state in which he shall be chosen.

Representatives and direct taxes shall be apportioned among the several states which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of Representatives shall not exceed one for

every thirty thousand, but each state shall have at least one representative; and until such enumeration shall be made, the state of New-Hampshire shall be entitled to chuse three; Massachusetts, eight; Rhode-Island and Providence Plantations, one; Connecticut, five; New-York, six; New-Jersey, four; Pennsylvania, eight; Delaware, one; Maryland, six; Virginia, ten; North-Carolina, five; South-Carolina, five; and Georgia, three.

When vacancies happen in the representation from any state, the executive authority thereof shall issue writs of election to fill such vacancies.

The house of representatives shall chuse their speaker and other officers, and shall have the sole power of impeachment.

Of the Senate.

SEC. 3. The senate of the United States shall be composed of two senators from each state, chosen by the legislature thereof, for six years; and each senator shall have one vote.

Immediately after they shall be assembled, in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year, so that one third may be chosen every second year; and if vacancies happen by resignation, or otherwise, during the recess of the legislature of any state, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.

No person shall be a senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state for which he shall be chosen.

The vice-president of the United States shall be president of the senate, but shall have no vote, unless they be equally divided.

The senate shall chuse their other officers, and also a president *pro tempore*, in the absence of the vice-president, or when he shall exercise the office of president of the United States.

The senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the president of the United States is tried, the chief justice shall preside: and no person shall be convicted without the concurrence of two thirds of the members present.

Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office, of honor, trust or profit, un-

der the United States; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment according to law.

SEC. 4. The times, places and manner of holding elections for senators and representatives, shall be prescribed in each state by the legislature thereof: But the congress may at any time by law make or alter such regulations, except as to the places of choosing senators.

Manner of electing Members.

The congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

Congress to assemble annually.

SEC. 5. Each house shall be the judge of the elections, returns and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties, as each house may provide.

Powers of each House.

Each house may determine the rules of its proceedings, punish its members for disorderly behaviour, and, with the concurrence of two thirds, expel a member.

Each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may, in their judgment, require secrecy; and the yeas and nays of the members of either house on any question, shall, at the desire of one fifth of those present, be entered on the journal.

Neither house, during the session of congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

SEC. 6. The senators and representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall in all cases, except treason, felony and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to and returning from the same; and for any speech or debate in either house, they shall not be questioned in any other place.

Compensation, privileges and incapacities of the Members.

No senator or representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time; and no person holding any office under the United States, shall be a member of either house during his continuance in office.

SEC. 7. All bills for raising revenue shall originate in the house of representatives; but the senate may propose or concur with amendments as on other bills.

Manner of passing bills, orders, &c.

Every bill which shall have passed the house of repre-

THE CONSTITUTION OF

representatives and the senate, shall, before it become a law, be presented to the president of the United States : If he approve he shall sign it ; but if not he shall return it, with his objections, to that house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If after such reconsideration, two thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two thirds of that house, it shall become a law. But in all such cases, the votes of both houses shall be determined by yeas and nays ; and the names of the persons voting for and against the bill, shall be entered on the journal of each house respectively. If any bill shall not be returned by the president within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the congress, by their adjournment, prevent its return, in which case it shall not be a law.

Every order, resolution or vote to which the concurrence of the senate and house of representatives may be necessary (except on a question of adjournment) shall be presented to the president of the United States ; and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the senate and house of representatives, according to the rules and limitations prescribed in the case of a bill.

Powers of
Congress.

SEC. 8. The congress shall have power

To lay and collect taxes, duties, imposts and excises ; to pay the debts and provide for the common defence and general welfare of the United States ; but all duties, imposts and excises, shall be uniform throughout the United States :

To borrow money on the credit of the United States :

To regulate commerce with foreign nations, and among the several states, and with the Indian tribes :

To establish a uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States :

To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures :

To provide for the punishment of counterfeiting the securities and current coin of the United States :

To establish post-offices and post-roads :

To promote the progress of science and useful arts, by securing, for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries :

To constitute tribunals inferior to the supreme court :

To define and punish piracies and felonies committed on the high seas, and offences against the law of nations :

To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water :

To raise and support armies ; but no appropriation of money to that use shall be for a longer term than two years :

To provide and maintain a navy :

To make rules for the government and regulation of the land and naval forces :

To provide for calling forth the militia to execute the laws of the Union, suppress insurrections and repel invasions :

To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by congress :

To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings ;
—And

To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution in the government of the United States, or in any department or officer thereof.

SEC. 9. The migration or importation of such persons as any of the states now existing shall think proper to admit, shall not be prohibited by the congress prior to the year one thousand eight hundred and eight ; but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

Limitations
of the powers
of Congress.

The privilege of the writ of *habeas corpus* shall not be suspended unless when, in cases of rebellion or invasion, the public safety may require it.

No bill of attainder or *ex post facto* law shall be passed.

No capitation, or other direct tax shall be laid, unless in proportion to the census or enumeration herein before directed to be taken.

No tax or duty shall be laid on articles exported from any state. No preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another : Nor shall vessels bound to, or

from, one state be obliged to enter, clear, or pay duties in another.

No money shall be drawn from the treasury, but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

No title of nobility shall be granted by the United States: and no person holding any office of profit or trust under them, shall, without the consent of the congress, accept of any present, emolument, office, or title of any kind whatever, from any king, prince or foreign state.

Limitations
of the powers
of the individ-
ual states.

SEC. 10. No state shall enter into any treaty, alliance or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make any thing but gold and silver coin a tender in payment of debts; pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts, or grant any title of nobility.

No state shall, without the consent of the congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts, laid by any state on imports or exports, shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and controul of the congress. No state shall, without the consent of congress, lay any duty of tonnage, keep troops, or ships of war in time of peace, enter into any agreement or compact with another state, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

ARTICLE II.

The executive
power to be
vested in a
President.

SEC. 1. The executive power shall be vested in a president of the United States of America. He shall hold his office during the term of four years, and together with the vice-president, chosen for the same term, be elected as follows:

Manner of
electing the
President and
V. President.

Each state shall appoint in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of senators and representatives to which the state may be entitled in the congress; but no senator or representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

The electors shall meet in their respective states, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same state with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the presi-

dent of the senate. The president of the senate shall, in the presence of the senate and house of representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the president, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the house of representatives shall immediately chuse by ballot one of them for president; and if no person have a majority, then from the five highest on the list, the said house shall, in like manner, chuse the president. But in chusing the president, the votes shall be taken by states, the representation from each state having one vote: a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. In every case, after the choice of the President, the person having the greatest number of votes of the electors, shall be the vice-president. But if there should remain two or more who have equal votes, the senate shall chuse from them by ballot, the vice-president.

The congress may determine the time of chusing the electors; and the day on which they shall give their votes; which day shall be the same throughout the United States.

No person, except a natural born citizen, or a citizen of the United States, at the time of the adoption of this constitution shall be eligible to the office of president; neither shall any person be eligible to that office, who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

Who may be elected President.

In case of the removal of the president from office or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the vice-president, and the congress may by law provide for the case of removal, death; resignation or inability, both of the president and vice-president, declaring what officer shall then act as president, and such officer shall act accordingly, until the disability be removed or a president shall be elected.

In case of the removal, &c. of the President, his powers to devolve on the Vice President, &c.

The president shall, at stated times, receive for his services, a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States, or any of them.

President's compensation.

Before he enter on the execution of his office he shall take the following oath or affirmation:

"I do solemnly swear (or affirm) that I will faithfully execute the office of president of the United States, and will, to the best of my ability, preserve, protect and defend the constitution of the United States."

His oath

Powers and
duties of the
President.

SEC. 2. The president shall be commander in chief of the army and navy of the United States, and of the militia of the several states when called into the actual service of the United States ; he may require the opinion in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices ; and he shall have power to grant reprieves and pardons for offences against the United States, except in cases of impeachment.

He shall have power by and with the advice and consent of the senate, to make treaties, provided two-thirds of the senators present concur ; and he shall nominate, and by and with the advice and consent of the senate, shall appoint ambassadors, other public ministers and consuls, judges of the supreme court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law : But the congress may, by law, vest the appointment of such inferior officers as they think proper, in the president alone, in the courts of law, or in the heads of departments.

The president shall have power to fill up all vacancies that may happen during the recess of the senate, by granting commissions which shall expire at the end of their next session.

SEC. 3. He shall, from time to time, give to the congress information of the state of the Union, and recommend to their consideration, such measures as he shall judge necessary and expedient ; he may, on extraordinary occasions, convene both houses, or either of them, and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper ; he shall receive ambassadors and other public ministers ; he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States.

How the President and all civil officers may be removed from office.

SEC. 4. The president, vice-president and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of treason, bribery or other high crimes and misdemeanors.

ARTICLE III.

Of the judicial power.

SEC. 1. The judicial power of the United States shall be vested in one supreme court, and in such inferior courts as the congress may, from time to time, ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behaviour ; and shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office.

Concerning the judges.

Extent of the judicial power

SEC. 2. The judicial power shall extend to all cases, in law and equity, arising under this constitution, the

Laws of the United States, and treaties made, or which shall be made, under their authority ; to all cases affecting ambassadors, other public ministers, and consuls ; to all cases of admiralty and maritime jurisdiction ; to controversies to which the United States shall be a party ; to controversies between two or more states, between a state and citizens of another state, between citizens of different states ; between citizens of the same state, claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects.

In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be a party the supreme court shall have original jurisdiction. In all the other cases before mentioned, the supreme court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations, as the congress shall make.

Of the original and appellate jurisdiction of the supreme court.

The trial of all crimes, except in cases of impeachment, shall be by jury ; and such trial shall be held in the state where the said crimes shall have been committed ; but when not committed within any state, the trial shall be at such place or places, as the congress may by law have directed.

Of trials for crimes.

SEC. 3. Treason against the United States, shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

Of treason.

The congress shall have power to declare the punishment of treason : but no attainder of treason shall work corruption of blood, or forfeiture, except during the life of the person attained.

ARTICLE IV.

SEC. 1. Full faith and credit shall be given, in each state, to the public acts, records, and judicial proceedings of every other state. And the congress may, by general laws, prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof.

Faith to be given to public acts, &c. of each state.

SEC. 2. The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.

Privileges of citizens to extend thro all the states.

A person charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall, on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime.

Fugitives from justice to be delivered up.

No person, held to service or labour in one state, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labour ; but shall be delivered

Persons held to service or labor to be delivered up.

up on claim of the party to whom such service or labour may be due.

New states
may be admit-
ted.

SEC. 3. New states may be admitted by the congress into this Union ; but no new state shall be formed or erected within the jurisdiction of any other state, nor any state be formed by the junction of two or more states; or parts of states, without the consent of the legislatures of the states concerned, as well as of the congress.

Disposal of
territory and
other property
of the Uni-
ted States.

The congress shall have power to dispose of, and make all needful rules and regulations, respecting the territory or other property belonging to the United States ; and nothing in this constitution shall be so construed, as to prejudice any claims of the United States, or of any particular state.

Guarantee &
protection of
the states by
the union.

SEC. 4. The United States shall guarantee to every state in this Union, a republican form of government ; and shall protect each of them against invasion, and on application of the legislature, or of the executive (when the legislature cannot be convened) against domestic violence.

ARTICLE V.

Of amend-
ments to the
constitution.

The congress, whenever two thirds of both houses shall deem it necessary, shall propose amendments to this constitution, or, on the application of the legislatures of two thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this constitution, when ratified by the legislatures of three fourths of the several states, or by conventions in three fourths thereof as the one or the other mode of ratification may be proposed by the congress ; provided, that no amendment, which may be made prior to the year one thousand eight hundred and eight, shall in any manner affect the first and fourth clauses in the ninth section of the first article ; and that no state, without its consent, shall be deprived of its equal suffrage in the senate.

ARTICLE VI.

Former debts
and engage-
ments to re-
main valid.

All debts contracted, and engagements entered into, before the adoption of this constitution, shall be as valid against the United States under this constitution, as under the confederation.

This constitu-
tion, the laws
and treaties of
the United
States to be
the supreme
law of the
land.

This constitution, and the laws of the United States, which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land ; and the judges in every state, shall be bound thereby, any thing in the constitution or laws of any state to the contrary notwithstanding.

Oath to sup-
port the con-
stitution.

The senators and representatives before mentioned and the members of the several state legislatures, and

all executive and judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation, to support this constitution, but no religious test shall ever be required as a qualification to any office or public trust under the United States.

There shall be no religious test.

ARTICLE VII.

The ratification of the conventions of nine states shall be sufficient for the establishment of this constitution between the states so ratifying the same.

When this Constitution shall take effect.

Done in Convention, by the unanimous consent of the states present, the seventeenth day of September, in the year of our Lord one thousand seven hundred and eighty-seven, and of the independence of the United States of America the twelfth. In witness whereof, we have hereunto subscribed our names.

GEORGE WASHINGTON, President,
and Deputy from Virginia.

New-Hampshire.

John Langdon,
Nicholas Gilman.

Massachusetts.

Nathaniel Gorham,
Rufus King.

Connecticut.

William Samuel Johnson,
Roger Sherman.

New-York.

Alexander Hamilton.

New-Jersey.

William Livingston,
David Brearley,
William Patterson,
Jonathan Dayton.

Pennsylvania.

Benjamin Franklin,
Thomas Mifflin,
Robert Morris,
George Clymer,
Thomas Fitzsimons,
Jared Ingersoll,
James Wilson,
Gouverneur Morris.

Delaware.

George Reed,
Gunning Bedford, Junior.
John Dickinson,
Richard Bassett,
Jacob Broom.

Maryland.

James M'Henry,
Daniel of St. Thomas Jenifer,
Daniel Carroll.

Virginia.

John Blair,
James Madison, Junior.

North-Carolina.

William Blount,
Richard Dobbs Spaight,
Hugh Williamson.

South-Carolina.

John Rutledge,
Charles Cotesworth Pinckney,
Charles Pinckney,
Pierce Butler.

Georgia.

William Few,
Abraham Baldwin.

Attest.

WILLIAM JACKSON, Secretary.

The CONSTITUTION of

IN CONVENTION, Monday, September 17, 1787.

P R E S E N T,

The States of NEW-HAMPSHIRE, MASSACHUSETTS, CONNECTICUT, Mr. HAMILTON from NEW-YORK, NEW-JERSEY, PENNSYLVANIA, DELAWARE, MARYLAND, VIRGINIA, NORTH-CAROLINA, SOUTH-CAROLINA, and GEORGIA :

R E S O L V E D,

THAT the preceding constitution be laid before the United States in congress assembled, and that it is the opinion of this convention, that it should afterwards be submitted to a convention of delegates, chosen in each state by the people thereof, under the recommendation of its legislature, for their assent and ratification ; and that each convention assenting to, and ratifying the same, should give notice thereof to the United States in congress assembled.

Resolved, That it is the opinion of this convention, that as soon as the conventions of nine states shall have ratified this constitution, the United States in congress assembled should fix a day on which electors should be appointed by the states which shall have ratified the same, and a day on which the electors should assemble to vote for the president, and the time and place for commencing proceedings under this constitution. That after such publication, the electors should be appointed, and the senators and representatives elected. That the electors should meet on the day fixed for the election of the president, and should transmit their votes, certified, signed, sealed and directed, as the constitution requires, to the secretary of the United States in congress assembled. That the senators and representatives should convene at the time and place assigned. That the senators should appoint a president of the senate, for the sole purpose of receiving, opening and counting the votes for president ; and, that after he shall be chosen, the congress, together with the president, should, without delay, proceed to execute this constitution.

By the unanimous order of the convention,

GEORGE WASHINGTON, *President,*

WILLIAM JACKSON, *Secretary.*

IN CONVENTION, September, 17, 1787.

S I R,

WE have now the honor to submit to the consideration of the United States in congress assembled, that constitution which has appeared to us the most advisable.

The friends of our country have long seen and desired, that the power of making war, peace and treaties ; that of levying money and regulating commerce, and the correspondent executive and judicial authorities, should be fully and effectually vested in the general government of the Union : But the impropriety of delegating such extensive trust to one body of men is evident—Hence results the necessity of a different organization.

It is obviously impracticable in the federal government of these states, to secure all rights of independent sovereignty to each, and yet provide for the interest and safety of all : Individuals entering into society, must give up a share of liberty to preserve the rest. The magnitude of the sacrifice must depend as well on situation and circumstance, as on the object to be obtained. It is at all times difficult to draw with precision the line between those rights which must be surrendered, and those which may be reserved ; and on the present occasion, this difficulty was increased by a difference among the several states as to their situation, extent, habits, and particular interests.

In all our deliberations on this subject we kept steadily in our view, that which appears to us the greatest interest of every true American, the consolidation of our union, in which is involved our prosperity, felicity, safety, perhaps our national existence. This important consideration, seriously and deeply impressed on our minds, led each state in the convention to be less rigid on points of inferior magnitude, than might have been otherwise expected ; and thus the constitution, which we now present, is the result of a spirit of amity, and of that mutual deference and concession which the peculiarity of our political situation rendered indispensable.

That it will meet the full and entire approbation of every state, is not perhaps, to be expected ; but each will doubtless consider, that had her interest alone been consulted, the consequences might have been particularly disagreeable or injurious to others ; that it is liable to as few exceptions as could reasonably have been expected, we hope and believe ; that it may promote the lasting welfare of that country so dear to us all, and secure her freedom and happiness, is our most ardent wish.

With great respect, we have the honor to be, Sir,

Your excellency's most obedient

And humble servants,

GEORGE WASHINGTON, President.

By unanimous order of the convention,

His Excellency the PRESIDENT of CONGRESS.

Amendments.

ARTICLE THE FIRST.

Free exercise
of Religion.Freedom of
Press.Right to peti-
tion.

CONGRESS shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

ARTICLE THE SECOND.

Right to bear
arms.

A well regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed.

ARTICLE THE THIRD.

No soldier to
be billeted,
except, &c.

No soldier shall, in time of peace, be quartered in any house without the consent of the owner; nor in time of war, but in a manner to be prescribed by law.

ARTICLE THE FOURTH.

Unreasonable
searches pro-
hibited.

The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

ARTICLE THE FIFTH.

Proceeding in
certain criminal
cases.

No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia when in actual service in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be witness against himself; nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

Property se-
cured.

ARTICLE THE SIXTH.

Mode of trial
in criminal
cases.

In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence.

ARTICLE THE SEVENTH.

In civil cases.

In suits at common law, where the value in contro-

verly shall exceed twenty dollars, the right of trial by jury shall be preserved; and no fact tried by a jury, shall be otherwise re-examined in any court of the United States than according to the rules of the common law.

ARTICLE THE EIGHTH.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Concerning
bail, fines and
punishments.

ARTICLE THE NINTH.

The enumeration in the constitution of certain rights shall not be construed to deny or disparage others retained by the people.

Rights not
enumerated.

ARTICLE THE TENTH.

The powers not delegated to the United States by the constitution, nor prohibited by it to the states, are reserved to the states respectively or to the people.

Powers reserved
to the people.

ARTICLE THE ELEVENTH.

The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state.

Limitation
of the judicial
power.



L A W S

OF THE

STATE OF NEW-YORK.

SIXTH SESSION.

C H A P. XII.

An ACT to prevent private Lotteries, to remit certain Penalties, and to repeal the Acts therein mentioned.

Passed 14th February, 1783.

WHEREAS experience has proved, that private lotteries occasion idleness and dissipation, and have been productive of frauds and impositions :

I. *Be it therefore enacted by the People of the State of New-York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same,* That each and every lottery, other than such as shall be authorised by the legislature, shall be deemed a common and public nuisance ; and the justices of the supreme court, and all other justices of the courts of oyer and terminer or gaol delivery, and the justices of the courts of general or quarter sessions of the peace, at their several courts, within any of their respective counties in this state, shall have cognizance of such offence, and are hereby enjoined and required, in all and every of their charges hereafter to be made or given by them to the grand jurors in their respective courts, strictly to charge such grand jurors diligently to enquire of, and to present or indict all offences against this act ; and the court to which an indictment or presentment shall be preferred for such offence, shall be, and are hereby empowered and enjoined, to prosecute such indictment, or cause the same to be prosecuted in the usual manner of prosecution ; and upon conviction to adjudge such fines and penalties as are herein after directed, together with the costs of prosecution, and to order execution ; and to direct the fines or penalties, when recovered to be applied in the manner herein after directed.

Lotteries deemed nuisances

Indictable.

II. *And be it further enacted by the authority aforesaid,* That no person or persons shall, within this state, open, set on foot, carry on, promote, draw or make, publicly or privately, any lottery, game or device of chance, of any nature or kind whatsoever, or by whatever name, de-

Lotteries prohibited.

nomination or title it may be called, known or distinguished, or shall by any such ways or means, expose or set to sale, any houses, lands tenements or real estate, or any goods, wares, merchandises, cash, or other thing or things whatsoever : And that every person who shall offend in the premises against the true intent and meaning of this act, and shall thereof be convicted, by the oath of one or more credible witness or witnesses, in either of the courts herein before mentioned, in any part within this state, shall forfeit the amount of the whole sum or value for which such lottery was made ; and if such sum or value shall not be satisfactorily ascertained to the said court at the time of the trial, then each such offender so convicted, shall forfeit five hundred pounds ; and that such offender shall be committed to the common gaol of the county, until such forfeiture, with the costs of prosecution, be paid ; the one half of such forfeiture to be paid to the treasurer of this state, for the use of the people of this state, to be applied for the support of government, and the other half to the person or persons who shall have voluntarily given information of such offence, and prosecuted the same to effect ; and for defect of such voluntary informant, then to be paid and applied as the first moiety of such forfeiture, is hereby directed to be paid and applied.

Forfeiture on conviction.

How applied.

Buying or selling tickets or any agency in lotteries punished.

III. *And be it further enacted by the authority aforesaid,* That if any person shall vend, sell or barter, or offer to vend, sell or barter, any ticket or tickets of any such private lottery, game, or device of chance ; or if any person or persons shall purchase the same, or in any other way become adventurer or adventurers therein, or be any ways concerned in any such lottery, game, or device of chance, either by printing, writing, or any other ways publishing an account thereof, or where tickets may be had or obtained for the same, or be in any wise aiding or assisting in the same ; every person so offending, shall, on being convicted thereof as before-mentioned, in any of the courts before-mentioned, forfeit and pay for every such offence, the sum of ten pounds ; and the costs of prosecution, to be levied and applied in like manner as is directed with respect to the other forfeitures herein before mentioned.

Adventurers to forfeit the prize, and informers to be exempted from the penalty and rewarded.

IV. *And be it further enacted by the authority aforesaid,* That if any person or persons, who shall be adventurer or adventurers in any such lottery, game, or device of chance as aforesaid, for transferring of any property by lot or chance, shall become entitled to any prize or prizes, he, she, or they shall be liable to forfeit, and shall forfeit the same, with costs of suit, to such person or persons who shall give information thereof, so that such offender may be convicted in manner before directed ; and for the recovery of such prize or prizes, such person or persons

so informing, shall be entitled to maintain an action in any court of record within this state, against any person who shall have opened, set on foot, carried on, or made such lottery, game, or device of chance, or against any person or persons who shall have sold, or offered for sale any ticket or tickets : And if the person or persons so informing, be or shall have been an adventurer only in such lottery, game, or device of chance, he, she or they shall, upon giving such information as aforesaid, be exempted from the penalty otherwise incurred by this act : And any person or persons adventuring as aforesaid, whose ticket or tickets shall be drawn or turn out blank, shall, upon giving information as aforesaid, so that the person or persons who shall have opened, set on foot, carried on, drawn, or made the said lottery or other game, or device of chance, ~~or shall have sold or bartered~~, or offered for sale or barter such ticket or tickets, may be convicted, be entitled to recover against any such persons or persons so convicted, double the sum which he, she, or they adventured in such lottery, game, or device of chance, with double costs of suit, by action of debt in any court of record within this state. And if any person or persons who shall have so opened, set on foot, carried on, drawn or made such lottery, game, or device of chance, as aforesaid, shall either before or after the drawing or finishing of the same, give information thereof, so that the persons who have adventured therein, shall be convicted in the manner before directed, he, she, or they, so giving information, shall not only be exempted from the penalty otherwise incurred by this act, and be entitled to the reward allowed to persons in such case informing, but shall also have a right to retain all such monies or other effects, as he, she, or they may have received by the sale or barter of tickets.

V. *And be it further enacted by the authority aforesaid,* That every grant, bargain, sale, conveyance or transfer of any lands, tenements, hereditaments or real estate, or of any goods or chattels whatsoever, which shall hereafter be made in pursuance of any such lottery, game or other device, to be determined by chance or lot, are hereby declared void, and of none effect.

Grants, &c.
in pursuance
of any lottery
void.

VI. *And be it further enacted by the authority aforesaid,* That where any two or more persons shall be concerned in setting on foot, carrying on, drawing or making any such lottery, game, or device of chance, as aforesaid, or be joint adventurers in the same, the penalties herein before directed, for such offences respectively, may be recovered against and levied from all, or each, or either of them ; any thing herein contained to the contrary notwithstanding.

Penalties how
recovered.

[SEVENTH SECTION OBSOLETE.]

Duty of justices and other officers.

United States lotteries not affected by this act.

VIII. *And be it further enacted by the authority aforesaid,* That the justices of the peace, mayors, sheriffs, bailiffs, constables and other civil officers, within their respective jurisdictions, are hereby empowered, directed and required, to use their utmost endeavours, by all lawful ways and means, to prevent the opening, setting on foot, or drawing of any such unlawful lotteries, games, or devices of chance, prohibited by this act. *Provided always,* That this act, or any matter, clause or thing therein contained, shall not affect, or be deemed, judged, or construed to affect any lottery or lotteries, established or to be established by, or under the authority of the United States in Congress assembled, or any act, matter or thing, done or to be done in any wise, relating to such lottery or lotteries, by any persons whomsoever.

SEVENTH SESSION.

C H A P. XXV.

An ACT to ascertain Weights and Measures within this State.

Passed 10th April, 1784.

WHEREAS it is agreeable to equity and beneficial to commerce, that a people who live in the same community, shall have one equal and just weight and balance according to a true and perfect standard, and affize of measure to be established by law, without which necessary provision, frauds and deceits may be practised with impunity.

One beam, weight and measure.

Standard to be kept by the clerk of the city of New-York.

L. Be it therefore enacted by the People of the State of New-York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same, That from and after the first day of June next, there shall be one just beam, one certain weight and measure, that is to say, avoirdupoise and troy weights, bushels, half bushels, pecks and half pecks, according to the standard in use in this state, on the day of the declaration of the independence thereof; and that the standard weights and measures in the custody of William Hardenbrook, who, before and at the time of the said declaration was the public sealer and marker of all beams and weights, and measures, within the city and county of New-York, which standard is according to the standard of the court of exchequer in that part of Great-Britain, called England, shall forever hereafter be deposited with, kept and preserved by the clerk of the peace, or common clerk of the city and county of New-York, for the time being, and shall be and hereby are declared and established to be and remain the standard, for ascertaining all beams, weights and measures throughout the state, any usage or custom to the contrary thereof notwithstanding; and the said

clerk of the peace or common clerk, now, and for the time being, shall take an oath to be administered to him in open court before the mayor, recorder and aldermen of the said city, well and faithfully to preserve the said weights, seals and measures, and to suffer no other person to make use of the same, except a sworn public sealer and marker of weights and measures : *Provided always*, That the said William Hardenbrook shall deliver the said beam, weights and measures, to the clerk of the peace, or common clerk of the said city and county, in the presence of the mayor, recorder, and one or more of the aldermen of the said city, and shall declare on his solemn oath, that the said beam, weights or measures are the same which he received from the court of exchequer aforesaid, according to the best of his knowledge and belief.

II. *Provided always, and be it further enacted*, That if any of the said standard beams, weights and measures, shall be broken, impaired or missing, that it shall and may be lawful, to and for the mayor and aldermen of the city of New-York, in common council convened, to cause to be delivered to the said clerk of the peace, or common clerk for the time being, any standard, beam, weights and measures, respectively, to supply such deficiency, taking care that the same is according to the standard established in the late colony, now state of New-York, immediately preceding the declaration of independence of this state.

How to be supplied.

III. *And be it further enacted by the authority aforesaid*, That for the better observance and execution of this act, it shall and may be lawful to and for his excellency the governor of this state for the time being, by and with the advice and consent of the council of appointment, to appoint fit persons in all convenient and proper places within this state, for sealing and marking all beams, weights and measures ; that the persons so to be appointed, shall impress with the letter A, all beams, weights and measures to be sealed and marked by each of them respectively, and shall respectively take and subscribe an oath before one of the judges of the court of common pleas of the county in which he or they shall reside, for the faithful execution of the trust to be committed to them by virtue of this act ; and the judge before whom such oath shall be taken, shall cause a certificate thereof to be filed with the clerk of the county, wherein such judge shall reside ; and every such sworn public sealer and marker of weights, seals and measures, shall be entitled to receive for his pains in sealing and marking all such beams and measures, as shall from time to time for that purpose be brought to him, the rate of ninepence, and for every weight and every small liquid measure, one penny, and no more : Saving always nevertheless unto the cities of New-York and Albany, and borough of Westchester, and the mayors thereof for the time being, all such

Council to appoint sealers and markers.

Their duty.

Corporate rights saved.

rights, privileges and usages, as they respectively can justly claim, as clerks of the markets within the said cities and borough, or otherwise howsoever; any thing herein contained to the contrary hercof notwithstanding.

C H A P. XXVI.

An ACT authorising Magistrates within this State, to take Affidavits to be used in the manner therein mentioned.

Passed 10th April, 1784.

WHEREAS persons residing within this state may be material witnesses in causes to be tried in others of the United States, and may refuse to attend at the trial of such causes, or voluntarily to make affidavit of the circumstances they may know, touching the matter in dispute: And whereas it is represented to this legislature, that it is the practice in the courts of justice in some of the United States, to admit as legal evidence, affidavits taken in the manner herein after mentioned:

Witnesses
compelled to
make affida-
vit in cases de-
pending in the
courts of any
other state:

I. *Be it therefore enacted by the People of the State of New-York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same,* That it shall be lawful for a judge of the supreme court, or any magistrate of any city or county within this state, upon application, by, or in behalf of either of the parties to a suit depending in a court of judicature in any other of the United States, and information, that any person residing within the county where such application is made, is a material witness in the suit, to issue a summons to such person, requiring him or her to appear and make affidavit of all such matters and things, as he or she may know concerning the same, and to transmit the affidavit to the court where the cause is depending, in such manner as the practice of such court may require to render such affidavit legal testimony.

Allowance to
such witnesses

II. *Provided always, and be it further enacted by the authority aforesaid,* That every witness who shall be summoned to give evidence in manner aforesaid, shall be entitled to receive from the party at whose instance he shall be summoned, four shillings for every day he shall give his attendance; and that no witness shall be bound to appear by virtue of this act, except only before one of the judges or magistrates who shall be nearest to the place of residence of such witness.

Witnesses re-
fusing to be
examined.

III. *And be it further enacted by the authority aforesaid,* That whenever any person shall refuse to appear and make affidavit in pursuance of such summons, a warrant shall issue from such judge or magistrate, to compel his appearance, and if on his appearance he shall refuse to make affidavit, or affirmation if a Quaker, of the fact which may be within his knowledge, touching the matters in question,

he shall be committed to the common gaol of the county, there to remain without bail or mainprife for the term of six calendar months.

EIGHTH SESSION.

C H A P. LIV.

An ACT to restrain Hawkers and Pedlars.

Passed 4th April, 1785.

BE it enacted by the People of the State of New-York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same, That from and after the first day of July next, no person or persons shall or may use or exercise the profession or calling of a hawker or pedlar in this state, under the penalty of five pounds for each offence, to be recovered, with costs in any court having cognizance to try the same; the one half of which said penalty shall go to the person or persons who shall sue and prosecute for the same, and the other half to the poor of the town, manor, district or precinct where the offence shall be committed. *Provided always*, That this act shall not be construed to debar any person or persons, from carrying, conveying or selling any goods, wares or merchandize, of the growth, produce or manufacture of this state, or of any other of the United States of America; and that all suits to be brought for any offence against the true intent and meaning of this act, shall be brought within thirty days after the offence shall be committed.

C H A P. LXXXI.

An ACT to prevent the Firing of Guns and other Fire-Arms within this State, on certain days therein mentioned.

Passed 22d April, 1785.

WHEREAS great dangers have arisen, and mischief been done by the pernicious practice of firing guns, pistols, rockets, squibs, and other fire-works, on the eve of the last day of December, and first and second days of January; For prevention whereof for the future,

Be it enacted by the People of the State of New-York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same, That if any person or persons whomsoever, shall fire or discharge any gun, pistol, rocket, squib or other fire-work, within a quarter of a mile of any building, on the said eve or days before mentioned, every such person or persons so offending, and being thereof

convicted before any justice of the peace of the city or county where such offence shall be committed, either by the confession of the party or parties so offending, or the oath of any one credible witness, shall for every such offence, forfeit the sum of forty shillings, with costs of suit, to be levied by distress and sale of the offender's goods and chattels, by warrant under the hand and seal of the said justice before whom such conviction or convictions shall be had as aforesaid; the one moiety of which forfeiture to be applied to the use of the poor of the town or place wherein such offender shall be convicted, and the other moiety to the use of the person or persons who shall prosecute for the same; and for want of sufficient distress whereon to levy the same, every such justice is hereby empowered and required, by warrant under his hand and seal, to commit every such person or persons so as aforesaid offending, to the common gaol of the county wherein the said forfeiture shall arise, there to remain without bail or mainprize, for the space of one month, unless such forfeiture or forfeitures be sooner paid.

N I N T H S E S S I O N.

C H A P. V I I.

An ACT for regulating Trials upon Writs of Right.

Passed 6th February, 1786.

WHEREAS formerly trials upon writs of right were by battle or the grand assise. And whereas the barbarous custom of trials by battle hath deservedly fallen into disuse, but hath never been abrogated by law. And whereas by the institution of the trial by the grand assise, four knights are to be summoned to elect the recognitors: And whereas there is not, nor cannot, by law, be any such order of men in this state;

Trial by battle abolished.

I. *Be it enacted by the People of the State of New-York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same,* That trials by battle in all cases shall be, and hereby are forever abolished.

Electors of the grand assise.

II. *And be it further enacted by the authority aforesaid,* That in all writs hereafter to be issued for summoning electors of the grand assise, instead of the words, *Four lawful knights of your county girt with swords,* the words, *Four good and lawful men of your county,* shall be inserted. And that every of the said men to be summoned and returned to make election of the grand assise, shall always be such as are or shall be duly qualified to vote for senators, according to the constitution of this state.

III. *And be it further enacted by the authority aforesaid,* That if either party shall have cause to challenge the electors so summoned and returned, or any of them, such challenge shall be taken and made upon their appearance, and before they be sworn to make election of the grand assize, and not after: and the justices shall thereupon proceed to try and determine such challenges, in such manner as challenges, in cases of common juries, are, by law, to be tried and determined. And if any such electors shall be found not duly qualified, or not indifferent between the parties, then a new writ shall be issued for summoning another, or others, as the case may require; and those who are not challenged, or found duly qualified and indifferent between the parties, as well as the parties, shall be adjourned over to the day of the return of such new writ. And when such four electors as shall not be challenged, or shall be found duly qualified and indifferent, shall appear, they shall be severally sworn, lawfully and truly to chuse, in the presence of the parties, in addition to themselves, twenty other good and lawful men of the county, who best know and will declare the truth between the parties, to make recognition of the grand assize; and every of the recognitors so to be chosen by the said four electors, shall always be such men as shall be duly qualified by the laws of this state, to serve as jurors upon trials at bar in the supreme court; and if either party shall have cause to challenge any of the said recognitors, such challenge shall be taken and made before the said four electors, who shall immediately try and determine the same. And if any man named by the said four electors as a recognizer, shall be challenged, and found not duly qualified, or not indifferent between the parties, they shall leave his name out of the pannel, and chuse another in his stead, and when they have completed a pannel of twenty-four recognitors of themselves, and others as aforesaid, they shall, in their proper persons, return and deliver the same to the justices in open court.

Challenge of
the electors.

Recognitors
chosen:

Their qualifi-
cations.

Challenge of
recognitors.

IV. *And be it further enacted by the authority aforesaid,* That upon the delivery of such pannel into court, a writ shall issue to the proper officer, commanding him to cause the said recognitors to come before the justices, at a certain day and place, to make recognition of the grand assize between the parties: And if the cause is to be tried at the circuit court in any of the counties, a proper clause of *nisi prius* shall be inserted in such writ for the purpose; and when a sufficient number of the said recognitors shall appear to make the said recognition, such of them as do appear, shall be called and sworn as they stand upon the said pannel, until sixteen of them shall be sworn, who shall make the said recognition.

Recognitors
how summoned
and sworn.

On default
distringas to
issue.

V. *And be it further enacted by the authority aforesaid,* That if a sufficient number of the said recognitors to make the said recognition, shall not appear at the return of the first process for summoning them, writs of *distringas* shall be issued against them, from time to time, until they shall appear.

Trial, where
had.

VI. *And be it further enacted by the authority aforesaid,* That all trials upon writs of right, shall be had in the county where the tenements in demand shall be situated, unless the court upon motion of either party, shall order the trial to be at the bar of the supreme court.

C H A P. XII.

An ACT to abolish Entails, to confirm Conveyances by Tenants in Tail, to regulate Descents, and to direct the Mode of Conveyances to Joint-Tenants.

Passed 23d February, 1786.

Estates tail
abolished.

Persons seised
in fee tail,
deemed seised
in fee simple.

I. **B**E it enacted by the People of the State of New-York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same, That all estates tail shall be, and are hereby abolished; and that in all cases where any person or persons now is, or are, or if the act herein after mentioned and repealed had not been passed, would now be seised in fee tail of any lands, tenements or hereditaments, such person and persons shall be deemed to be seised of the same in fee simple absolute. *And further,* that in all cases where any person or persons would, if the said act and this present act had not been passed, at any time hereafter become seised in fee tail of any lands, tenements or hereditaments, by virtue of any devise, gift, grant or other conveyance heretofore made, or hereafter to be made, or by any other means whatsoever, such person and persons, instead of becoming seised thereof in fee tail, shall be deemed and adjudged to become seised thereof in fee simple absolute.

Conveyances
by tenants in
tail, in cer-
tain cases ef-
fectual.

II. *And be it further enacted by the authority aforesaid,* That where any lands, tenements or hereditaments heretofore have been devised, granted or otherwise conveyed by a tenant in tail, and the person or persons to whom such devise, grant or other conveyance hath been made, his, her or their heirs or assigns, have or hath, from the time such devise took effect, or from the time such grant or other conveyance was made, to the day of the passing of this act, been in the uninterrupted possession of such lands, tenements or hereditaments, and claiming and holding the same under or by virtue of such devise, grant or other conveyance, then such devise, grant or other conveyance shall be deemed as good, legal and effectual, to all intents and purposes, as if such tenant in tail had, at the time of

the making of such devise, grant or other conveyance, been seised of such lands, tenements or hereditaments in fee simple ; any law to the contrary hereof notwithstanding.

III. *And be it further enacted by the authority aforesaid,* That where any person shall die seised of any lands, tenements or hereditaments, without devising the same in due form of law, and leaving more than one person lawful issue, or without lawful issue, the inheritance shall hereafter, in the five several following cases, descend and go as in each case is particularly specified ; That is to say,

Inheritances,
how to de-
scend :

First, In case the person so seised shall leave several persons lawful issue, in the direct line of lineal descent, and all of equal degree of consanguinity to the person so seised, the inheritance shall then descend to the said several persons as tenants in common, in equal parts, however remote from the person so seised the common degree of consanguinity may be, in the same manner as if they were all daughters of the person so seised.

To lawful
issue of equal
degree ;

Secondly, In case the said person so seised shall die, leaving lawful issue of different degrees of consanguinity to him or her, the said person so seised, the inheritance shall descend to the lawful child or children of the said person so seised, if any or either of them be then living, and to the lawful issue of such of the children of the said person so seised, as shall be then dead, leaving lawful issue, as tenants in common ; such issue always to inherit, if one person solely, and if several persons as tenants in common, in equal parts, such share only as would have descended to him, her or their parent, if such parent had been then living ; and each of the lawful children of the said person so seised, always to inherit such share as would have descended to him or her, if all the children of the said person so seised, who shall be then dead, leaving lawful issue, had been living at the time of the death of the said person so seised ; and if there be no child of the said person so seised living, at the time of the death of the said person so seised, and only a grand child or grand children, and the lawful issue of a grand child or grand children, who shall be then dead, leaving lawful issue, then the inheritance shall descend to such grand child or grand children of the person so seised, and to the lawful issue of such of the grand children of the said person so seised, as shall be then dead, leaving lawful issue, as tenants in common ; such issue always to inherit, if one person solely, and if several persons as tenants in common, in equal parts, such share only as would have descended to him, her or their parent, if such parent had been then living ; and each of the grand children of the said person so seised, who shall be living at the time of the death of the person so seised, always to inherit such share as would have descended to him or her, if all the grand children of the

To lawful is-
sue of differ-
ent degrees :

said person so seised, who shall be then dead, leaving lawful issue, had been living at the time of the death of the said person so seised. And the same law of inheritance and descent, shall be observed in case of the death of the grand children, and other descendants to the remotest degree.

When the father to inherit;

Thirdly, In case the said person so seised shall die without lawful issue, leaving a father, then the inheritance shall go to the father of the said person so seised, in fee simple; unless the said inheritance came to the person so seised, from the part of his or her mother, in which case it shall descend, as if such person so seised had survived his or her father.

Brothers and sisters;

Fourthly, In case the said person so seised shall, after the death of his or her father, die without lawful issue, leaving a brother or sister, or leaving a brother or brothers, and a sister or sisters, the inheritance shall descend to such brothers or sisters, or to such brother or brothers, and sister or sisters, as the case may be, as tenants in common in equal parts; and in such case every brother and sister of the half blood of the said person so seised, shall inherit equally with those of the whole blood; unless where such inheritance came to the said person so seised by descent, devise or gift, of some one of his or her ancestors, in which case all those who are not of the blood of such ancestor, shall be excluded from such inheritance. And,

Half blood;

Children of brothers and sisters:

Fifthly, In case any such brother or sister who would have inherited by this law, if living, shall die before the said person so seised, and leave a lawful child or children, such child or children surviving the said person so seised, shall inherit, if a child solely, and if children, as tenants in common in equal parts, such share as would have descended to his, her or their father or mother, if such father or mother had survived the said person so seised. And in all cases of descent, not particularly provided for by this act, the common law shall govern.

In other cases the common law to govern

Estate by the courtesy or in dower not affected.

IV. *Provided always, and be it further enacted by the authority aforesaid,* That nothing herein contained shall be construed to bar or injure the right or estate of a husband, as tenant by the courtesy, or a widow's right of dower.

Posthumous children.

V. *And be it further enacted by the authority aforesaid,* That all posthumous children shall, in all cases whatsoever, inherit in like manner as if they were born in the lifetime of their respective fathers.

No estates in joint tenancy, except in certain cases.

VI. *And be it further enacted by the authority aforesaid,* That no estate in joint-tenancy in lands, tenements or hereditaments, shall be held or claimed by or under any grant, devise or conveyance whatsoever, hereafter to be made, other than to executors or trustees, unless the premises therein mentioned shall expressly be thereby declared to pass, not in tenancy in common, but in joint-

tenancy, and every such estate, other than to executors or trustees, unless otherwise expressly declared as aforesaid, shall be deemed to be in tenancy in common; any law, custom or usage to the contrary notwithstanding.

VII. *And be it further enacted by the authority aforesaid,* That the act, entitled *An act to abolish entails, to confirm conveyances by tenants in tail, to distribute estates real of intestates, to remedy defective conveyances to joint-tenants, and directing the mode of such conveyances in future*, passed the twelfth day of July, in the year of our Lord one thousand seven hundred and eighty-two, shall be, and hereby is repealed; but all descents and conveyances which have happened or been made since the passing of the said act, hereby repealed, shall take effect according to the said act. *Provided always,* That notwithstanding any thing in the said act contained, every grant, conveyance or devise heretofore made, or hereafter to be made to executors or trustees, shall be deemed to be in joint-tenancy, and not in tenancy in common.

Former act of 6th Feb. ch. 2. repealed.

Conveyances to executors and trustees.

TENTH SESSION.

C H A P. I.

An ACT concerning the Rights of the Citizens of this State.

Passed 26th January, 1787.

BE it enacted by the People of the State of New-York, represented in Senate and Assembly, and it is hereby enacted and declared by the authority of the same: First, That no authority shall, on any pretence whatsoever, be exercised over the citizens of this state, but such as is or shall be derived from and granted by the people of this state.

All authority from the people.

Second, That no citizen of this state shall be taken or imprisoned, or be disseised of his or her freehold, or liberties, or free customs; or outlawed, or exiled, or condemned, or otherwise destroyed, but by lawful judgment of his or her peers, or by due process of law.

No citizen to be imprisoned &c. but by law

Third, That no citizen of this state shall be taken or imprisoned for any offence, upon petition or suggestion, unless it be by indictment or presentment of good and lawful men of the same neighborhood where such deeds be done, in due manner, or by due process of law.

No imprisonment but upon indictment, &c.

Fourth, That no person shall be put to answer without presentment before justices, or matter of record, or due process of law, according to the law of the land; and if any thing be done to the contrary, it shall be void in law, and holden for error.

No person put to answer without presentment or process.

Fifth, That no person, of what estate or condition soever, shall be taken or imprisoned, or disinherited, or put

No person to be imprisoned

No pre-emption to any one in or out of market.

Any person making purveyance punished.

Treble damages to the party grieved.

Action not to be stayed but by writ of error.

their goods, without such full and free consent as aforesaid. *And further*, That no pre-emption shall be allowed or claimed in the behalf of the chief magistrate or officer, or of any other officer or officers for the time being, of this state, or of the United States, or of any other person or persons whomsoever, in market or out of market; but that it shall be forever hereafter free to all and every of the citizens of this state, to sell, dispose or employ his and her goods to any other person or persons, at his or her pleasure; any pretence of making provision or purveyance of victuals, carriages, or other things for the chief magistrate or officer, or other officer or officers for the time being, of this state, or of the United States, or for any other person or persons whomsoever, or any pretence of pre-emption in his, their or any or either of their behalfs notwithstanding; and if any person or persons shall, at any time hereafter, make provision or purveyance for the chief magistrate or officer, or any other officer or officers for the time being, of this state, or of the United States, or for any other person or persons whomsoever, or impress, or take any such carriages, or other things aforesaid, on any pretence, or colour of any warrant aforesaid, under the great seal, or otherwise contrary to the intent of this act, it shall be lawful for the justices of the peace, or any one or more of them dwelling near, and the constables of such town or place where such occasion shall happen, at the request of the party grieved, and they are hereby enjoined, to commit, or cause to be committed the party or parties so doing and offending, to gaol, till the next general sessions, there to be indicted and proceeded against for the same; and that the officers and inhabitants of the said town or place where such offence shall happen, shall be assistant therein: *And moreover*, The party grieved shall have his or her action or actions against such offender or offenders, and therein recover his or her treble damages and treble costs; in which action no aid-prayer, privilege, protection, imparlance, injunction, or order of restraint, shall be granted or allowed: And if any person or persons shall (after notice given that the action depending is grounded upon this statute) cause or procure any action at the common law, grounded on this statute, to be delayed or stayed before judgment, by colour or means of any order, injunction, power, warrant, or authority, save only of the court where such action shall be brought and depending; or after judgment had upon such action, shall cause or procure execution of such judgment to be stayed or delayed, by colour or means of any order, injunction, warrant, power, or authority, save only by writ of error or attain, or order of such court where such writ of error or attain shall be depending; that then the person so offending shall forfeit to

the people of this State, all his or her goods and chattels, and the issues and profits of his or her lands and tenements during life.

C H A P. III.

An ACT for the Recovery of Damages in Writs of Assise and real Actions.

Passed 26th January, 1787.

BE it enacted by the People of the State of New-York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same, That in all assises, if judgment be given for the plaintiff, he or she shall recover his or her damages; and in all assises of novel disseisin and writs of entry, the demandants, if they recover the tenements demanded, shall also recover their damages against the disseisors: And if the disseisors alien the land, and have not wherewith the damages may be levied, they to whose hands such tenements shall come, shall be charged with the damages, so that every one shall answer for his or her time: And further, That in all writs and actions possessory, whereby lands or tenements are demanded, damages shall be recovered as aforesaid.

Plaintiff, to recover damages in all assises, writs of entry and possessory actions.

C H A P. IV.

An ACT concerning Dower.

Passed 26th January, 1787.

I. **B**E it enacted by the People of the State of New-York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same, That a widow, after the death of her husband, shall give nothing for her dower, or her inheritance which her husband and she held at the day of the death of her husband; and she shall tarry in the chief house of her husband forty days after the death of her husband, or until her dower be assigned to her; and she shall have in the mean time her reasonable sustentance out of the estate of her husband; and for her dower shall be assigned unto her the third part of all the lands of her husband, which were his at any time during the coverture.

Right of dower.

II. And be it further enacted by the authority aforesaid, That in case widows, after the death of their husbands, be deforced of their dowers, and cannot have their dowers or quarantine without suit, whosoever deforce them of their dowers or quarantine of the lands whereof their husbands died or shall die seized, and be convicted of such wrongful deforcement, shall yield damages to the same widows;

Widows deforced of their dower to recover damages.

That is to say, The value of the whole dower to them belonging, from the time of the death of their husbands unto the day that the said widows shall recover seisin of their dowers by judgment of the court, and the deforcors shall nevertheless be amerced.

Writ unde nihil habet not to abate, &c.

III. *And be it further enacted by the authority aforesaid,* That in a writ of dower *unde nihil habet*, the writ shall not abate by the exception of the tenant, because she hath received her dower of another person before her writ purchased, unless he can shew that she hath received part of her dower of himself, and in the same town, before the writ purchased.

Dower in lands recovered against the husband by covin or default.

IV. *And be it further enacted by the authority aforesaid,* That in case where the husband be impleaded for land giveth up the land demanded unto his adversary, by covin, after the death of the husband, his wife shall recover her dower of the same land, if she demand it by writ; and in case where the husband loseth the land in demand by default, and his wife after his death demandeth her dower, she shall be heard; and if it be alledged against her, that her husband lost the land whereof dower is demanded, by judgment, whereby she ought not to have dower, and then it be required by what judgment, and it be found that it was by default, whereunto the tenant must answer, then it behoveth the tenant to answer further, and shew that he had and hath right in the same land, according to the form of the writ that the tenant before purchased against the husband; and if he can shew that the husband of such wife had no right in the lands, nor any other but he that holdeth them, the tenant shall go quit, and the wife shall not recover her dower therein; which thing, if he cannot shew, the wife shall recover her dower.

Infant heir to recover against a woman endowed by default or collusion.

V. *And be it further enacted by the authority aforesaid,* That where a woman, not having a right to demand dower, and the heir being within age, shall purchase a writ of dower against a guardian, and the guardian shall endow the woman by favour, or make default, or by collusion defend the plea faintly, whereby the woman is awarded her dower in prejudice of the heir; in all such cases, the heir when he comes to full age, shall have an action to demand the seisin of his ancestor against such a woman, like as he should have against any other deforcior. But the woman shall have her exception saved against the demandant, to shew that she had right to her dower, which if she can shew, she shall go quit and retain her dower, and the heir shall be amerced; and if she cannot shew that she had a right to her dower, the heir shall recover his demand; and in like manner a woman shall be aided, if the heir, or any other do implead her for her dower, or if she lose her dower by default, in which case the default shall not be so prejudicial to her but that she shall recover her

dower if she have right thereto; and she shall have a writ in this form: *Command A, that justly and without delay, he render to B, who was the wife of F, so much land, with the appurtenances, in C, which she claims to be her reasonable dower, or, of her reasonable dower, and of which the aforesaid A despoileth her.* And to this writ the tenant shall have his exception, to shew that she had no right to be endowed, which if he can verify, he shall go quit; if not, the woman shall recover the land whereof she was before endowed.

Form of writ to recover dower lost by default.

VI. And be it further enacted by the authority aforesaid, That a writ of admeasurement of dower shall be from henceforth granted to a guardian, and the heir when he cometh to full age, shall not be barred by the suit of such guardian that sueth against the tenant in dower feignedly and by collusion; but that he may admeasure the dower after as it ought to be admeasured by law; and in the writ of admeasurement of dower, as well as in the writ of admeasurement of pasture, when it is come to the great distress, day shall be given within which two counties may be holden, at which open proclamation shall be made, that the defendant shall come at the day contained in the writ to answer to the plaintiff; at which day, if he come, the plea shall pass between them; and if he do not come, and the proclamation be testified and returned by the sheriff in manner aforesaid, upon his default, admeasurement shall be made: *And further,* That hereafter no sheriff shall hold pleas of admeasurement of dower or of pasture, but all such writs shall be made returnable before the justices of the supreme court, or in the courts of common pleas in the respective counties.

Guardian to have writ of admeasurement of dower.

Manner of proceeding therein.

No sheriff to hold pleas thereof.

VII. And be it further enacted by the authority aforesaid, That if a wife willingly leave her husband, and go away and continue with her adulterer, and be thereof convicted, she shall be barred forever of action to demand her dower that she might have had of her husband's lands, unless her husband willingly be reconciled to her and permit her to dwell with him; in which case she shall be restored to her action of dower.

Adulteress barred of her dower unless, &c.

VIII. And be it further enacted by the authority aforesaid, That where any man hath purchased, or hath an estate made and conveyed of and in any lands, tenements or hereditaments, unto him and to his wife, and to the heirs of the husband or wife, or to the husband and to his wife, and to the heirs of their two bodies begotten, or to the heirs of one of their bodies begotten, or to the husband and to his wife for the term of their lives, or for the term of the life of the said wife; or where any such estate or purchase of any lands, tenements or hereditaments hath been, or hereafter shall be made to any husband and to his wife, in manner and form above expressed, or to any other per-

A jointress shall not have dower.

son or persons, and to their heirs and assigns, to the use and behoof of the said husband and wife, or to the use of the wife, as is before rehearsed, for the jointure of the wife; that then, and in every such case, every married woman having such jointure made or hereafter to be made, shall not claim or have title to have any dower of the residue of the lands, tenements or hereditaments that at any time were her said husbands by whom she hath any such jointure, nor shall demand nor claim her dower of or against them that have the lands and inheritances of her said husband; but if any such woman be lawfully expelled or evicted from her said jointure, or from any part thereof, without any fraud or covin by lawful entry or action, or by discontinuance of her husband, then every such woman shall be endowed of as much of the residue of her husband's lands, tenements or hereditaments, whereof she was before dowable, as the same lands and tenements from which she shall be so evicted and expelled, shall amount or extend unto.

A woman to make her election of a jointure after marriage, or her dower.

IX. *And be it further enacted by the authority aforesaid,* That if any wife have, or hereafter shall have any lands, tenements or hereditaments given or assured unto her after marriage, for the term of her life, or otherwise, in jointure, and the said wife after that shall survive her same husband in whose time the said jointure was made or assured unto her, that then the same wife so surviving shall or may, at her liberty, after the death of her said husband, refuse to have and take the lands, tenements and hereditaments so to her given, appointed or assured during the coverture, for term of her life, or otherwise, in jointure; and thereupon shall or may have, ask, demand and take her dower, by writ of dower or otherwise, according to the common law, of and in all such lands, tenements and hereditaments as her husband was and stood seised of any estate of inheritance, at any time during the coverture.

Attainder of the husband no bar to her dower.

X. *And be it further enacted by the authority aforesaid,* That the wife of every person who shall hereafter be attainted, convicted or outlawed of any treason, petty treason, misprision of treason, murder or felony whatsoever, shall be endowable and enabled, if she survive her husband, to demand, have and enjoy her dower, in like manner and form as if her husband had not been attainted, convicted or outlawed.

If a woman be ravished & consent to the ravisher neither shall be entitled to any inheritance, dower or jointure.

XI. *And be it further enacted by the authority aforesaid,* That whosoever and whensoever any woman shall be ravished, and after such rape do consent to the ravisher, as well the ravisher as she that is ravished, and every of them shall, from thenceforth, be disabled, and by the same deed be unable to have or challenge any inheritance, dower, jointure, joint-tenement, or joint-purchase, after the death of their husbands and ancestors; and that in

the next of blood of the ravisher, or of her who was ravished, to whom such inheritance, dower, jointure, joint-tenement, or joint-purchase, ought to revert, remain or fall after the death of the ravisher, or of her that is ravished; shall have title immediately: That is to say, After the rape to enter upon the ravisher, or her that is ravished; and their assigns and tenants, in the same inheritance, dower, jointure, joint-tenement, or joint-purchase, and to hold the same in state of inheritance.

C H A P. VI.

An ACT for preventing Waste.

Passed 30th January, 1787.

I. *BE* it enacted by the People of the State of New-York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same, That no guardian shall make or suffer any waste, sale or destruction of the inheritance of his ward, or of those things that he hath, or may have in his custody, but shall safely keep the same inheritance to the use of the said heir, and keep up and sustain the houses, gardens and other things pertaining to the same lands, by and with the issues and profits thereof, and shall deliver the same to his ward, when he cometh to his full age, in as good order and condition at least as such guardian received the same; and shall answer to such heir for the residue of the issues and profits of the same inheritance, by a lawful account, saving to the same guardians their reasonable charges and expences. And if any guardian shall make or suffer any waste, sale or destruction of the inheritance of his ward, he shall lose the same custody, and shall recompence the ward thrice so much as the damages shall be taxed at by the jury.

A guardian
not to suffer
or make any
waste:

Liable to tre-
ble damages
for such waste

II. *And be it further enacted by the authority aforesaid,* That no tenant for life or years, or for any other term, shall during the term, make or suffer any waste, sale or destruction of houses, gardens, orchards, lands or woods, or any thing belonging to the tenements demised, without special licence in writing, making mention that he may do it.

Tenants not to
suffer or make
any waste.

III. *And be it further enacted by the authority aforesaid,* That from henceforth any person may have a writ of waste out of the chancery, against him or her who holdeth by courtesy, or otherwise, for term of life or for term of years or other term, or a woman in dower as well as against guardians. And whoever shall be convicted of waste, shall lose the thing or place wasted, and shall recompence thrice so much as the damages shall be taxed at by the jury.

Action of
waste given in
certain cases.

To recover
the place
wasted & tre-
ble damages:

Process there-
in.

IV. *And be it further enacted by the authority aforesaid,* That in all actions of waste, if the defendant come not at the return of the original writ, he shall be attached ; and if he come not at the return of the attachment, he shall be distrained ; and if he come not after the distress, or if he come and afterwards make default, the sheriff shall be commanded, that in his proper person he take with him twelve good and lawful men of his county, and go to the place wasted, and enquire of the waste done, and return an inquest ; and after the inquest returned, the plaintiff shall have judgment to recover the place wasted, and treble the damages found by the inquest.

Proceedings
between par-
ceners, ten-
ants in com-
mon and joint
tenants.

V. *And be it further enacted by the authority aforesaid,* That where two or more do, or shall hold any lands, tenements, woods, fishing, or other such thing in common as parceners, tenants in common, or joint-tenants, where- in none knoweth his or her several part, and some or one of them do waste against the mind of the other, an action shall lie by a writ of waste ; and when it shall come un- to judgment, the defendant shall chuse either to take his or her part in a place certain by the sheriff with a jury to be assigned, or else he or she shall grant to take nothing from thenceforth, in the same lands, tenements, woods, fishings, or other such thing, but as his or her partners will take ; and if he or she chuse to take his or her part in a place certain, the same shall be assigned him or her in the part wasted, as it was before he or she committed the waste. But if the defendant shall not chuse to take his or her part in a place certain, or if the waste exceed his or her proportion, the plaintiff shall recover against such defendant, such damages as shall be found by the jury or inquest.

Heir may
have action of
waste.

VI. *And be it further enacted by the authority aforesaid,* That every heir in whose ward soever he or she be, and whether he or she be in ward or not and as well within age as of full age, shall have his or her recovery by a writ of waste, for waste and destruction made in lands and tenements, of his or her inheritance, as well in the time of his or her ancestor or ancestors, as at any other time after the inheritance descended or come to him or her, and shall be answered unto therefore, and he or she shall recover the tenements wasted, and treble damages as aforesaid.

Tenants liable
to waste after
granting their
estates, if they
take the pro-
fits.

VII. *And be it further enacted by the authority aforesaid,* That where any tenant for term of life, or for another's life, or for term of years, or any other term, hath or shall let or grant his or her estate in the lands and tenements demised to or held by him or her, to any person or persons, and shall still continue to occupy the same lands and tenements, or take the profits thereof, and shall commit or suffer waste and destruction in the same lands and tenements, to the disinheritation of him, her or them in the

reversion, he, she or they to whom the reversion doth or shall appertain, may, in such case, have and maintain a writ of waste against the said tenant for term of life, or of another's life, or for term of years, or other term, and recover against him or her the place wasted, and his, her or their treble damages for the waste done, if the said tenant was punishable, of or for waste before he or she leased or granted over his or her estate as aforesaid, but not otherwise.

C H A P. XIII.

An ACT for preventing Usury.

Passed 8th February, 1787.

I. **B**E it enacted by the People of the State of New-York, Rate of Interest represented in Senate and Assembly, and it is hereby enacted by the authority of the same, That no person or persons whomsoever, shall hereafter take, directly or indirectly, for loan of any monies, wares, merchandize, or other things whatsoever, above the value of seven pounds for the forbearance of one hundred pounds, for one year, and so after that rate for a greater or less sum, or for a longer or shorter time; nor take any bond, bill, note or security whatsoever for payment of money to be lent, or to be due or payable by any means whatsoever, whereupon or whereby there shall be reserved, or taken, or included, above the rate of seven pounds in the hundred, as aforesaid. Securities for more declared void. And further, That all bonds, bills, notes, contracts and assurances whatsoever, and all deposits of goods, or other things whatsoever, for payment of any principal or money to be lent, or covenanted or agreed to be paid, upon or for any usury, whereupon or whereby there shall be reserved, or taken, or secured, or agreed to be reserved or taken, above the sum of seven pounds in the hundred, as aforesaid, shall be utterly void.

II. *And be it further enacted by the authority aforesaid,* That if any person or persons whomsoever, shall hereafter take, accept, or receive, by way or means of any corrupt bargain, loan, exchange, chevizance, shift, or interest of any money, wares, merchandize, or any other thing or things whatsoever, or by any deceitful ways or means, or by any covin, engine, or deceitful conveyance, for the forbearing, or giving day of payment for one whole year, or for his, her or their money, or other thing, above the sum of seven pounds, either in money, goods, or any other thing whatsoever, for the forbearing of one hundred pounds, for one year, and so after that rate for a greater or less sum, or for a longer or shorter time; the person or persons so paying any such sums of money, or delivering any such goods, or other thing, his, her or

Payment of more may be recovered back:

their executors or administrators, shall be at liberty, at any time within one year then next, to sue for and recover the money so paid, or the value of the goods or other thing so delivered, above the rate aforesaid, or any part thereof, from the person or persons who shall have taken, accepted or received the same, or from his, her or their executors or administrators, with costs of suit, by action of debt founded on this act, to be prosecuted in any court of record having cognizance of the same ; in which actions it shall be sufficient for the plaintiff or plaintiffs, to alledge, that the defendant or defendants, or his, her or their testator or intestate, is or are, or were indebted to the plaintiff or plaintiffs, or to his, her or their testator or intestate, in the sum so paid, or the value of the goods or other things so delivered, over and above the rate aforesaid, whereby an action accrued to the plaintiff or plaintiffs, according to the form of the statute, entitled *An act for preventing usury*, to demand and have of the defendant or defendants, or his, her or their testator or intestate, the said sum ; without setting forth the special matter. And in case the person or persons, so paying any such sum or sums of money, or so delivering any such goods or other thing, shall not, within the time aforesaid, really and *bona fide*, and without covin or collusion, commence his, her or their suit or action for the money so paid or for the value of the goods or other things so delivered as aforesaid, or shall suffer such suit or action to be delayed or discontinued, then it shall and may be lawful for any other person or persons, within one year after such neglect, discontinuance or delay, by any such action or suit as aforesaid, to sue for and recover the same in manner aforesaid, with costs of suit, against the person or persons who shall have taken, accepted or received the same, his, her or their executors or administrators ; the one moiety thereof to the use of the person or persons who will prosecute for the same with effect, and the other moiety thereof to the use of the poor of the town or place where the offence shall be committed.

After one
year any per-
son to sue for
the same.

Premium to
brokers :

III. *And be it further enacted by the authority aforesaid,* That no scrivener, broker, solicitor, or driver of bargains or contracts, shall hereafter take or receive, directly or indirectly, any sum or sums of money, reward, goods, or other thing, for brokerage, soliciting, driving, or procuring the loan or forbearance of any sum or sums of money, over and above the rate or value of ten shillings, for the loan or forbearance of one hundred pounds, for one year, and so in proportion for a greater or less sum ; or above three shillings for making or renewing any bond, bill, note, or other security, for the loan or forbearance thereof, or for any counter bond, bill or other security concerning the same. And in case any scrivener, broker, solicitor, or driver of bargains or contracts, or any other person

Payment of
more may be
recovered
back :

or persons, shall take, accept or receive, directly or indirectly, any sum or sums of money, reward, goods or other thing, or any deposit or security, for brokerage, soliciting, driving, or procuring the loan or forbearance of any sum or sums of money, over and above the rate or value of ten shillings, for the loan or forbearance of one hundred pounds, for one year, and so in proportion for a greater or less sum ; the person or persons so paying such sum or sums, or delivering or depositing any such goods, or other thing, above the rate aforesaid, or his, her or their executors or administrators, shall be at liberty, at any time within one year after paying or delivering the same, to sue for and recover the money so paid, and the value of the goods or other thing so delivered or deposited above the rate aforesaid, or any part thereof, from the person or persons who shall have taken, accepted or received the same, or from his, her or their executors or administrators, with costs of suit, by action of debt, founded on this act, to be prosecuted in any court of record having cognizance of the same ; in which actions it shall be sufficient for the plaintiff or plaintiffs to alledge, that the defendant or defendants, or his, her or their testator or intestate, is or are, or were indebted to the plaintiff or plaintiffs, his, her or their testator or intestate, in the sum so paid, or the value of the goods or other thing so delivered or deposited, over and above the rate aforesaid, whereby an action accrued to the plaintiff or plaintiffs, or to his, her or their testator or intestate, according to the form of the statute, entitled *An act for preventing usury*, to demand and have of the defendant or defendants, or his, her or their testator or intestate, the said sum, without setting forth the special matter. And in case the person or persons so paying any such sum or sums of money, or delivering or depositing any such goods, or other thing, or his, her or their executors or administrators, shall not within the time aforesaid, really and *bona fide*, or without fraud or collusion, commence his, her or their suit or action for the money so paid, or for the value of the goods or other things so delivered or deposited as aforesaid, over and above the rate aforesaid, or shall suffer such suit to be delayed or discontinued ; then it shall and may be lawful for any other person or persons, within one year after such neglect, discontinuance or delay, by any such action or suit as aforesaid, to sue for and recover the same in manner aforesaid, with costs of suit, against the person or persons who shall have taken, accepted or received the same, his, her or their executors or administrators ; the one moiety thereof to the use of the person or persons who shall prosecute for the same with effect, and the other moiety thereof to the use of the poor of the town or place where the offence shall be committed.

After one
year any per-
son may sue
for the same.

Persons charged with usury to answer bills of discovery.

IV. And for the better discovery of the money, goods or other things so taken, accepted or received as aforesaid, upon or for the loan or forbearance of money, goods, or other things, or for brokage, soliciting, driving, or procuring the loan or forbearance of any sum or sums of money ; *Be it further enacted by the authority aforesaid,* That all and every the person or persons who, by virtue of this act, shall or may be liable to be sued for the same, shall be obliged and compellable to answer, upon oath, such bill or bills as shall be preferred against him, her or them, in the court of chancery, for discovering the sum or sums of money, goods, or other thing, so taken, accepted or received, as aforesaid. *And further,* That upon the discovery and re-payment or return of the money, goods, or other thing so to be discovered, the person or persons who shall so discover and repay or return the same as aforesaid, with costs of suit, shall be acquitted and discharged from any further or other punishment, forfeiture or penalty, which he, she or they may have incurred or become liable to, by taking, accepting or receiving such money, goods or other thing so discovered, and repaid or returned as aforesaid.

[FIFTH SECTION OBSOLETE.]

C H A P XXII.

An ACT concerning Murder.

Passed 14th February, 1787.

Poisoning declared murder.

I. **B**E it enacted by the People of the State of New-York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same, That all wilful killing by poisoning of any person or persons, done, perpetrated or committed, or that at any time hereafter shall be done, perpetrated or committed, shall be adjudged, taken and deemed wilful murder of malice prepense ; and the offenders therein, their aiders, abettors, procurers and counsellors, shall suffer death, and forfeit, in every behalf, as in other cases of wilful murder of malice prepense.

Stabbing declared murder ;

II. *And be it further enacted by the authority aforesaid,* That if any person or persons, shall stab or thrust any person or persons, that hath not then any weapon drawn, or that hath not then first stricken the party who shall so stab or thrust, so as the person or persons so stabbed or thrust, shall thereof die, within the space of six months then next following, although it cannot be proved that the same was done of malice aforethought, every such unlawful killing shall be adjudged, taken and deemed, wilful murder : And the offenders therein, their aiders,

abettors, procurers and counsellors, shall suffer death, and forfeit, in every behalf, as in other cases of wilful murder of malice prepense. But this shall not extend to any person or persons who shall kill any person or persons in his, her or their own defence, or by misfortune, or in any other manner than as aforesaid; nor to any person or persons who, in keeping and preserving the peace, shall chance to kill any person or persons, so as such killing be not done wittingly, willingly, and of purpose; under pretext and colour of keeping the peace; nor to any person or persons, who in chastising or correcting his, her or their child, or servant, shall, contrary to his, her or their intent and purpose, chance to kill such child or servant.

Except in self defence or by misfortune.

III. *And be it further enacted by the authority aforesaid,* That when a servant killeth his master, or a wife her husband, of malice prepense, such offences shall be deemed and adjudged to be, and shall be punished as murder.

Servant killing his master, or wife her husband declared murder.

IV. *And be it further enacted by the authority aforesaid,* That if any evil disposed person or persons shall attempt feloniously to rob or murder any person or persons, in or nigh any highway, or in his or their mansion-house or dwelling-place, or shall feloniously attempt to break any dwelling-house in the night, and shall happen, in his or their being in such their felonious attempt, to be slain by him, her or them, whom the said evil-doers shall so attempt to rob or murder, or by any person or persons being in the dwelling-house, which the same evil-doers shall attempt burglariously to break by night; then and in every such case, if the person or persons so happening to kill any such person or persons, so attempting to commit any such murder, robbery or burglary, shall be indicted or appealed * of or for the death of such evil-disposed person or persons, so attempting to commit murder, robbery or burglary, as aforesaid, if it be found by verdict, that the party so indicted or appealed, killed such evil-disposed person or persons in such felonious attempt, the party so indicted or appealed, shall not forfeit or lose any thing for the death of such evil-disposed person, in manner aforesaid slain, but shall be thereof, and for the same, fully acquitted and discharged, in like manner as the same person or persons should be, if he, she or they were lawfully acquitted of the death of the said evil-disposed person or persons.

Persons killing others, attempting to rob or murder, to be acquitted.

* Prosecutions of felony and mayhem by appeal abolished: See act, 24th Sept. entitled "An act to repeal the 25th and parts of 28th therein mentioned."

V. *And be it further enacted by the authority aforesaid,* That upon all indictments and appeals of or for the death of any person or persons, if it be found by verdict, that the party indicted or appealed, killed the person or persons for whose death he, she or they is, are or shall be indicted or appealed, in his, her or their own defence,

Persons killing in self defence or by misfortune to be acquitted.

or by misfortune, then, and in every such case the party so found by verdict to have killed the person or persons for whose death, he, she or they is, are or shall be indicted or appealed, in his, her or their own defence, or by misfortune as aforesaid, shall not forfeit or lose any thing for the death of the same person or persons, so killed, but shall be thereof, and for the same, fully acquitted and discharged.

Persons killing others in apprehending felons, or in defence of husband, &c. or in suppressing riots, &c. to be acquitted.

VI. *And be it further enacted by the authority aforesaid,* That upon all indictments and appeals, of or for the death of any person or persons, if it be found by verdict, that the party indicted or appealed happened to kill the person or persons for whose death he, she or they is, are or shall be indicted or appealed, in attempting or endeavoring by any lawful ways or means, to apprehend, take or arrest the same person or persons, for any treason or felony done and committed, or hereafter to be done and committed, or in the lawful defence of his, her or their husband, wife, parent, child, master, mistress or servant, or in suppressing any riot, or in keeping and preserving the peace, or in lawfully chastising or correcting his, her or their child or servant; then, and in every such case, the party so found by verdict to have killed the person or persons for whose death he, she or they is, are or shall be indicted, or appealed, shall not forfeit or lose any thing for the death of the same person or persons so killed, but shall thereof, and for the same, be fully acquitted and discharged.

C H A P. XXVIII.

An ACT concerning Wrecks of the Sea, and giving Remedy to Merchants and others, who be robbed, or whose Goods shall be lost on the Sea.

Passed 16th February, 1787.

Vessels and goods wrecked how to be disposed of.

I. **B**E it enacted by the People of the State of New-York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same, That if a ship, vessel or boat, or any kind of goods, wares or merchandize, shall be cast by the sea on the land, neither such ship, vessel or boat, nor any thing in them, nor such goods, wares or merchandize, shall be adjudged wreck; but the ship, vessel or boat, and every thing therein contained, and such goods, wares and merchandize, shall be saved and kept by the view of the sheriff or coroner, or other person appointed for that purpose, who shall cause the same to be appraised, and safely keep them, so that if any person within a year and a day, sue for those goods, and prove that they were his, or lost in his keeping, they shall be restored to him without delay, upon his paying the charges

and expences of saving and keeping the said goods ; but if not, they shall remain to the people of this state, and shall, after the expiration of the said year and day, be sold at public vendue, by the sheriff, coroner, or other person appointed for that purpose, who shall have found or seized the same, who shall account for the same at the exchequer, deducting the charges and expences of saving and keeping the same, and of such sale : And he that doth otherwise, and is thereof convicted, shall yield damages to the party grieved, and shall be punished by fine or imprisonment, or both, at the discretion of the court or justices, before whom he shall be convicted.

And further, That if any merchant, citizen or stranger, or any other, be robbed of his goods upon the sea, and the goods come into any part of this state, and he will sue to recover the said goods, he shall be received to prove the said goods to be his own, by his marks or by his cocket, or by good and lawful merchants, citizens or strangers, or others ; and upon such proof, the same goods shall be delivered to him without delay.

Goods stolen
at sea to be
restored.

II. And be it further enacted by the authority aforesaid, That it shall and may be lawful for the person administering the government of this state for the time being, by and with the advice and consent of the council of appointment, from time to time, by commission under the great seal of this state, to appoint such and so many proper persons in each of the counties of this state, bordering on the sea, as they may think necessary, to aid and assist all such ships and vessels as may happen to be stranded on the coasts in the same counties ; and such persons so appointed, shall be and hereby are respectively authorized and required to give all possible aid and assistance to all such ships and vessels, and to the people on board of the same, and to use their utmost endeavours to save the same, and to save, preserve and secure, for the purposes aforesaid, the cargoes of all such ships and vessels, and all goods and chattels whatsoever, which may at any time be cast by the sea upon the land ; and to employ such and so many men for the purpose, as they may respectively think proper. And the sheriff, coroner, or other person so appointed as aforesaid, and all persons by them employed, shall have a reasonable allowance out of the same goods so saved and preserved, for saving, preserving and keeping the same. And such sheriff, coroner, or other person so appointed as aforesaid, shall and may detain the same goods until payment thereof ; and in case any dispute shall arise concerning such allowance, the same shall be settled and adjusted by any two or more justices of the peace, dwelling in or near the town or place where the said goods shall be found or saved. And if any person shall take away any goods whatsoever, out of any ship or vessel stranded as

Persons to be
appointed to
aid vessels in
distress :

Their allow-
ance.

Penalty for se-
curing goods.

Officers to
present offend-
ers.

aforesaid, or any goods cast by the sea upon the land, or found in any bay or creek, and not deliver the same goods to the sheriff or coroner of the county where the same shall be found, or to one of the persons appointed as aforesaid, within forty-eight hours after taking the same, or shall secret any such goods, or convert them to his own use, every person so offending shall yield double damages to the owner of such goods, to be recovered, with costs of suit, in any court having cognizance thereof, and be further punished by fine or imprisonment, or other corporal punishment, at the discretion of the court, not extending to life or limb. And it is hereby made the duty of every sheriff, coroner, justice of the peace, and constable, and the persons so appointed as aforesaid, to present all offences and offenders against this act, at the sessions of the peace in their respective counties; and the justices of the peace in their sessions, are hereby authorized and required to hear and determine the same.

C H A P. XXXVI.

An ACT concerning Tenures.

Passed 20th February, 1787.

Freeholders
may alien
their lands.

I. **B**E it enacted by the People of the State of New-York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same, That it shall forever hereafter be lawful for every freeholder to give, sell or alien the lands or tenements whereof he or she is, or at any time hereafter shall be, seised in fee simple, or any part thereof, at his or her pleasure, so always that the purchaser shall hold the lands or tenements so given, sold or aliened, of the chief lord, if there be any, of the same fee, by the same services and customs by which the person or persons making such gift, sale or alienation, before held the same lands or tenements. And if such freeholder give, sell or alien only a part of such lands or tenements, to any, the feoffee or alienee shall immediately hold such part of the chief lord, and shall be forthwith charged with the services for so much as pertaineth or ought to pertain to the said chief lord, for the same parcel, according to the quantity of the land or tenement so given, sold or aliened; and so in this case, the same part of the service shall remain to the lord to be taken by the hands of the feoffee or alienee, for which he or she ought to be attendant and answerable to the same chief lord according to the quantity of the land or tenement given, sold, or aliened, for the parcel of the service so due.

Charges inci-
dent to knight
service, and

II. *And be it further enacted by the authority aforesaid,* That all wardships, liveries, primer seisins and ousterle-

moits, values and forfeitures of marriage by reason of any tenure by *knights service*, and all mean rates, and all other gifts, grants and charges incident or arising for or by reason of *wardships, liveries, primer seisins or ousterlemains*, shall be, and hereby are declared to be taken away and discharged from the thirtieth day of August, in the year of our Lord one thousand six hundred and sixty-four : And that all *finés for alienations, seisures and pardons for alienations*, tenure by *homage*, and all *charges* incident or arising for or by reason of *wardship, livery, primer seisin, ousterlemain, or tenure by knights service, escuage*, and also *relief*, and *aid pur file marrier*, and *pur fair fitz chivalier*, and all other *charges* incident thereunto, shall be, and hereby are likewise declared to be taken away and discharged from the said thirtieth day of August, in the year of our Lord one thousand six hundred and sixty four ; and that all tenures by *knights service*, and by *knights service in capite*, and by *socage in capite*, and the fruits and consequences thereof happened, and which shall or may hereafter happen or arise thereupon or thereby, shall be and hereby are declared to be taken away and discharged, and forever abolished ; any law, statute, custom or usage to the contrary thereof in any wise notwithstanding.

Fines for alienation, and

Tenures by knight service abolished.

III. *And be it further enacted by the authority aforesaid*, That all tenures of any honours, manors, lands, tenements or hereditaments, or of any estate of inheritance at the common law, held either of the king or of any other person or persons, bodies politic or corporate, at any time before the fourth day of July, in the year of our Lord one thousand seven hundred and seventy-six, are hereby declared to be turned into *free and common socage*, to all intents and purposes, and shall be construed, adjudged and deemed to be *free and common socage* from the time of the creation thereof, and forever thereafter ; and that the same honours, manors, lands, tenements and hereditaments, shall forever hereafter stand and be discharged of all tenure by *homage, escuage, voyages royal and charges* for the same, *wardships* incident to tenure by *knights service*, and *values and forfeitures of marriage*, and all other *charges* incident to tenure by *knights service*, and of and from *relief, aid pur file marrier*, and *aid pur fair fitz chivalier* ; any law, statute, usage or custom to the contrary in any wise notwithstanding.

Estates by inheritance held in free & common socage.

IV. *And be it further enacted by the authority aforesaid*, That all conveyances and devices of any manors, lands, tenements or hereditaments, at any time heretofore made, shall be expounded to be of such effect, as if the same manors, lands, tenements and hereditaments had been then held, and continued to be holden in *free and common socage* only ; any law, statute, custom or usage to the contrary hereof in any wise notwithstanding.

Conveyances and devices how expounded.

This act not to affect rents or services incident to common soccage.

V. *Provided always, and be it further enacted by the authority aforesaid*, That this act, or any thing herein contained, shall not take away, nor be construed to take away or discharge, any rents certain, or other services incident or belonging to tenure in common soccage, due or to grow due to the people of this state, or any mean lord, or other private person, or the fealty or distresses incident thereunto.

Tenure of lands granted by the state allodial and not feudal.

VI. *And be it further enacted by the authority aforesaid*, That the tenure upon all gifts, grants and conveyances heretofore made, or hereafter to be made, of any manors, lands, tenements or hereditaments, of any estate of inheritance, by any letters patent under the great seal of this state or in any other manner, by the people of this state, or by the commissioners of forfeitures, shall be and remain allodial, and not feudal, and shall forever hereafter be taken and adjudged to be and continue in free and pure allodium only; and shall be forever discharged of all wardship, value and forfeiture of marriage, livery, primer seisin, cusserlemain, relief, aid pur file marrier, aid pur fair fitz chivalier, rents, renders, fealty and all other services whatsoever; any law, statute, reservation, custom or usage to the contrary hereof in any wise notwithstanding.

C H A P. XXXVII.

An ACT concerning Uses.

Passed 20th February, 1787.

The possession of lands to follow the use;

I. **B**E it enacted by the People of the State of New-York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same, That where any person or persons stand or be seised, or at any time hereafter shall stand or be seised of and in any manors, messuages, lands, tenements, rents, services, reversions, remainders or other hereditaments, to the use, confidence or trust of any other person or persons, or of any body politic, by reason of any bargain, sale, feoffment, fine, recovery, covenant, contract, agreement, will or otherwise, by any manner of means whatsoever; in every such case, all and every such person and persons, and bodies politic, that have, or hereafter shall have, any such use, confidence or trust, in fee simple, for term of life or of years, or otherwise, or any use, confidence or trust, in remainder or reversion, shall from henceforth stand, and be seised, deemed and adjudged, in lawful seisin, estate and possession of and in the same manors, messuages, lands, tenements, rents, services, reversions, remainders and hereditaments, with their appurtenances, to all intents, constructions and purposes in the law, of and in such like estates, as they had, or shall have, in use, trust or confidence, of or in the same;

and that the estate, title, right and possession that was or shall be in such person or persons that were or hereafter shall be seised of any lands, tenements or hereditaments, to the use, confidence or trust, of any such person or persons, or of any body politic, be from henceforth clearly deemed and adjudged to be in him, her or them, that have or hereafter shall have such use, confidence or trust, after such quality, manner, form and condition, as they had before, in or to the use, confidence or trust that was or shall be in them. *And further,* That where divers persons be, or hereafter shall be jointly seised of and in any lands, tenements, rents, reversions, remainders or other hereditaments, to the use, confidence or trust, of any of them to be jointly seised, in every such case the person or persons who have, or hereafter shall have, any such use, confidence or trust, in any such lands, tenements, rents, reversions, remainders or hereditaments, shall from henceforth have, and be deemed and adjudged to have, only to him or them that have, or hereafter shall have, such use, confidence or trust, such estate, possession and seisin of and in the same lands, tenements, rents, reversions, remainders and other hereditaments, in like nature, manner, form, condition and course, as he or they had before, in the use, confidence or trust of the same lands, tenements, rents, reversions, remainders or hereditaments; saving and reserving to all and singular persons and bodies politic, their heirs and successors, other than the person or persons who be seised, or hereafter shall be seised of any lands, tenements or hereditaments, to any use confidence or trust, all such right, title, entry, interest, possession, rents and action, as they, or any of them had, or might have had, before the making of this act; and saving and reserving also, to all and singular those persons, and to their heirs, who be, or hereafter shall be seised to any use, all such former right, title, entry, interest, possession, rents, customs, services and action, as they, or any of them, might have had, to his or their own proper use, in or to any manors, lands, tenements, rents or hereditaments, whereof they be, or hereafter shall be seised, to any other use, as if this act had never been made.

Saving to others their right.

II. *And be it further enacted by the authority aforesaid,* That where any person or persons, stand and be seised, or hereafter shall stand and be seised of and in any lands, tenements or hereditaments, in fee simple or otherwise, to the use or intent that some other person or persons shall have and perceive yearly to them, and to his or their heirs, one annual rent of ten pounds, or more or less, out of the same lands, tenements and hereditaments, and some other person or persons one other annual rent to him or them and their assigns, for term of life or years, or for some other special time, according to such intent and use as heretofore hath been, or hereafter shall be declared,

The person to whose use or intent is reserved deemed to be his possession, and may sue, train, &c.

limited and made thereof; in every such case, the same persons, their heirs and assigns, and every of them, who have such use and interest, to have and perceive any such annual rents, out of any lands, tenements or hereditaments, shall be adjudged and deemed to be in possession and seisin of the same rent, of and in such like estate as they had in the title, interest or use of the said rent or profit, and as if a sufficient grant or other lawful conveyance had been made and executed to them, by such as were or shall be seised, to the use or intent of any such rent to be had, made or paid, according to the very trust and intent thereof; and that all and every such person and persons as have or hereafter shall have any title, use and interest, in or to any such rent or profit, shall lawfully distrain for non-payment of the said rent, and in their own names make avowries, or by their bailiffs or servants make cognizances and justifications, and have all other suits, entries and remedies for such rents, as if the same rents had been actually and really granted to them, with sufficient clauses of distress, re-entry or otherwise, according to such conditions, pains, or other things limited and appointed, upon the trust and intent, for payment or surety of such rent.

Cestui que use
to have all re-
medies as ow-
ner.

III. *And be it further enacted by the authority aforesaid,* That all and singular person and persons, and bodies politic, which have or shall have any estate unto them executed, of and in any lands, tenements or hereditaments, by the authority of this act, shall and may have and take the same or like advantage, benefit, voucher, aid-prayer, remedy, commodity, and profit, by action, entry, condition, or otherwise, to all intents, constructions and purposes as the person or persons seised to their use, of or in any such lands, tenements or hereditaments so executed, had, should, might, or ought to have had at the time of the execution of the estate thereof, by the authority of this act, against any other person or persons, of or for any waste, disseisin, trespass, condition broken, or any other offence, cause or thing, concerning or touching the said lands or tenements, so executed by the authority of this act.

Lands liable
to execution
against *cestui*
que use;

IV. *And be it further enacted by the authority aforesaid,* That it shall and may be lawful for every sheriff, and other officer to whom any writ or precept is or shall be directed, at the suit of any person or persons, of, for and upon any judgment or recognizance, made or had, or hereafter to be made or had, to do, make and deliver execution unto the party in that behalf suing, of all such lands, tenements, rents and hereditaments, as any other person or persons be, in any manner of wise seised or possessed, or hereafter shall be seised or possessed, to the use or in trust for him against whom execution is so sued, like as the sheriff or other officer might or ought to have done, if the said party against whom execution is or shall be so sued, had been seised of

such lands, tenements, rents or other hereditaments, of such estate as he is or shall be seised of, in the use or trust, at the time of the said execution sued; and such lands, tenements, rents and other hereditaments, by force and virtue of such execution, shall accordingly be held and enjoyed, freed and discharged of all incumbrances of such person or persons as are or shall be so seised or possessed, to the use or in trust for the person against whom such execution is or shall be sued; and if any person intitled to, or having any such use or trust, hath devised, or shall devise the same by his last will, or hath died or shall die intestate leaving the same to descend to his heirs, the same shall be liable to the debts of the testator or intestate, and deemed and taken to be assets in the hands of the heirs or devisees, who shall be chargeable for the same, in like manner as they are by law chargeable and liable in cases where lands or tenements descend, or are devised to them, and not otherwise.

And shall be assets in the hands of his heirs or devisees.

V. *And be it further enacted by the authority aforesaid,* That every estate, feoffment, gift, release, grant, lease and confirmation of lands, tenements, rents, services or hereditaments, made or had, or hereafter to be made or had, by any person or persons, being of full age, of sound mind, at large, and not in dures, to any person or persons, and all recoveries and executions had or made, or to be had or made, shall be good and effectual to him, her or them, to whom it is so made, had or given, and to all others, to his, her or their use, against the seller, feoffor, donor or grantor thereof, and against the sellers, feoffors, donors or grantors, his, her and their heirs, claiming the same only as heir and heirs to the same sellers, feoffors, donors or grantors, and every of them, and against all others having or claiming any title or interest in the same, only to the use of the same seller, feoffor, donor or grantor, sellers, feoffors, donors or grantors, or his, her or their said heirs, at the time of the bargain, sale, covenant, gift or grant made.

Grants & conveyances good against the grantors, &c.

C H A P. XLIII.

An ACT concerning Fines and Recoveries of Lands and Tenements.

Passed 26th February, 1787.

L *BE it enacted by the People of the State of New-York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same,* That all fines of lands and tenements shall be levied in the supreme court, before the justices of the same court, and not elsewhere; and that when the original writ is returned and delivered

Fines of land where to be levied:

to the court, a pleader, in the presence of the parties before the justices, shall say to the court, "*We pray leave to agree,*" and one of the justices shall say, "*Leave is granted by the court ;*" and when the parties have made their agreement, proclamation shall be made, that all persons keep silence while the agreement between the parties is read ; and the pleader shall then read the concord between the parties in open court, and then deliver the same into court, where the cognizers shall acknowledge and sign the same, in the presence of the justices. And it is to be known, that the order of the law will not suffer a final accord to be levied, without an original writ, and that must be in the supreme court, before two justices of the same court at the least, and in the presence of the parties named in the writ, who must be of full age, of sound memory, and out of prison ; and if a *woman covert* be one of the parties, she must be first examined by one of the said justices ; and if she doth not assent thereunto, the fine shall not be levied. And the cause wherefore such solemnity ought to be observed in a fine, is because a fine is so high a bar, of so great force, and of so strong a nature in itself, that it concludeth not only such as be parties and privies thereto, and their heirs, but all other people of the world, being of full age, not covert of baron within this state, out of prison, and of sound memory, the day of the fine levied, if they make not their entry, and bring their action within five years after the fine levied.

By original writ.

Fine covert to be examined.

Fines, post fines, and king's silver abolished.

II. *And be it further enacted by the authority aforesaid,* That nothing shall be taken or paid for any writ or writs of covenant for levying of any fines, but the accustomed fees for writing, and for the seal of the same writ or writs ; and that all duties and impositions heretofore demanded and taken upon levying of fines, for the alienation or licences to agree, under the names of *fines, post fines, and the king's silver*, shall be, and hereby are, forever abolished.

Parties how to appear.

III. *And be it further enacted by the authority aforesaid,* That as well the parties demandant or plaintiff, as the tenants or defendants, that will yield or acknowledge their right of lands or tenements, unto others in pleas of *warrantia chartæ*, covenant or other pleas, whereupon fines are to be or may be levied, shall, before such fines do pass, appear personally in the said supreme court, so that their age, idiocy or any other default (if any be) may be adjudged and discerned by the justices ; but if any person or persons willing to levy such fine or fines, shall be out of this state, or cannot by reason of age, sickness or other reasonable impediment, come in person before the justices in the said supreme court, to acknowledge the same fine or fines, then and in every

such case, a writ or writs of *dedimus protestatem* may be granted out of the court of chancery to the justices of the supreme court, giving power to them, or any one or more of them, or to any other proper and discreet men, of good fame and credit, residing at or near the place where such party being out of this state, or so diseased or unable to travel, shall be, giving power to them, or any two or more of them to go to the party being out of this state, or so diseased or unable to travel, and to receive his, her or their acknowledgment or cognizance, upon that plea or form of plea, that he, she or they have or hath, whereupon the same fine or fines ought to be levied, and the said justice or justices, or other persons so empowered, shall certify the justices of the supreme court thereof by the record, so that all things incident to the same fine or fines, being examined by him or them, the same fine or fines may be lawfully levied. And it shall and may be lawful for the chief justice of the supreme court for the time being, to receive such acknowledgments or cognizances as aforesaid, by virtue of his office, and without any such commission as aforesaid. *And further*, That no person to whom any such fine shall be acknowledged, shall be allowed to appear in the said supreme court by attorney, unless such attorney shall be appointed by the person for whom he shall appear, before one of the justices of the supreme court, or commissioners authorized by a writ of *dedimus potestatem* out of the chancery, his or her attorney, to gain or lose in the plea, whereupon such fine is to be levied, and his warrant of attorney be signed by such justice or commissioners.

IV. *And be it further enacted by the authority aforesaid*, That every person who shall at any time hereafter take the acknowledgment or cognizance of any fine, or any warrant of attorney of any demandant or plaintiff, in any plea whereupon any fine or fines shall be levied, or of any demandant or plaintiff, or tenant or vouchee for suffering any common recovery, or shall certify them, or any of them, shall, with the certificate of the concord or warrant of attorney, certify also the day and year when the same was acknowledged; and that no person who shall take such acknowledgment, or cognizance of any fine, or any warrant of attorney for any of the purposes aforesaid, shall be bound, or by any means enforced to certify any such acknowledgment, or cognizance, or warrant, except it be within one year next after the same shall be taken. *And further*, That no attornment in or upon any fine, be entered upon record, unless the party mentioned to attorn therein, shall have first appeared in court in person, or by attorney, warranted by the hand of one of the justices of the supreme court, or commissioners as aforesaid, upon a writ of *quid juris clamat, quem redditum reddat, or per quod*

Time of taking cognizance of fine, or warrant of attorney to be certified.

No attornment to be entered without appearance of the party.

servitia, as the case may require ; and every entry of *attornment* hereafter to be made, where there shall be no appearance as aforesaid, shall be utterly void and of none effect, without any writ of error, or other means to be used for the avoiding thereof.

Fines to be
proclaimed.

V. *And be it further enacted by the authority aforesaid,* That after the engrossing of every fine hereafter to be levied in the said supreme court, before the justices of the same court, of any lands, tenements, or other hereditaments, the same fines shall be openly and solemnly read and proclaimed in the same court, four times ; That is to say, Once in the same term wherein it is engrossed, and once in every of the three terms holden next after the same engrossing, and in the same time that it is so read

Whom to con-
clude & when.

and proclaimed, all pleas shall cease ; and the said proclamations being so had and made, the fine shall be a final end, and conclude as well privies as strangers to the same, except women covert not parties to the same fine, and every person then being within the age of twenty-one years, in prison, or out of this state, or not of sound mind at the time of the said fine levied, not parties to such fine ; saving to every person and persons, and to their heirs, other than the parties to the said fine, such right, claim, and interest, as they have to or in the said lands, tenements, or other hereditaments, at the time of such fine engrossed, so that they pursue their title, claim or interest, by way of action or lawful entry, within five years next after the said proclamations had and made ; and saving also to all persons, such action, right, title, claim and interest, in or to the said lands, tenements or other hereditaments, as first shall grow, remain, descend or come to them, after the said fine engrossed, and proclamation made, by force of any gift, or by any other cause or matter had and made before the said fine levied, so that they take their action, or pursue their said right or title according to law, within five years next after such action, right, claim, title or interest to them accrued, descended, fallen or come, and that they and their heirs may have their said action against the pignor of the profits of the said lands, tenements and other hereditaments, at the time of the said action to be taken ; and if the same persons at the time of such action, right and title accrued, descended, remained or come unto them, be covert of baron, or within age, or in prison, or out of this state, or not of sound mind, then their action, right and title, to be reserved and saved to them, and to their heirs, unto the time that they come and be at their full age of twenty-one years, out of prison, within this state, discover and of sound mind, so that they or their heirs take and pursue, according to law, their said actions or their lawful entry, according to their right and title, within five years next

Exception
when the par-
ties had no-
thing in the
tenements.

after they come and be at their full age, out of prison, within this state, discover and of sound mind. *And further,* That all such persons as be covert of baron, and not party to the fine, and every person being within the age of twenty-one years, or in prison, or out of this state, or not of sound mind at the time of the said fine levied and enforced, and by this act before excepted, having any right or title, or cause of action, to any of the said lands, tenements or other hereditaments, that they or their heirs inheritable to the same, take their said actions or lawful entry, according to their right and title, within five years next after they come and be of the age of twenty-one years, out of prison, within this state, discover and of sound mind, and the same actions sue, or their lawful entry take and pursue, according to law; and if they do not take their actions and entry as is aforesaid, they and every of them, and their heirs, and the heirs of every of them, shall be concluded by the said fine forever, in like form as they be that be parties or privies to the said fine; saving to every person and persons not party nor privy to the said fine their exception to avoid the same fine, for that those who were parties to the said fine, had nothing, nor either of them, nor any person or persons to their use, nor to the use of either of them, had any thing in the lands and tenements comprised in the said fine, at the time of the said fine levied.

VI. *And be it further enacted by the authority aforesaid,* That no entry to be made upon any lands, tenements or hereditaments, shall be of any force or effect to avoid any fine levied, or to be levied, with proclamations in the said supreme court, unless upon such entry, an action shall be commenced within one year after making such entry, and prosecuted with effect.

No entry to avoid a fine unless action be brought within a year.

VII. *And be it further enacted by the authority aforesaid,* That every writ of covenant, and other writ, whereupon any fine shall hereafter be levied, with the return thereof, the writ of *dedimus potestatem*, for taking the acknowledgment or cognizance of any of the same fines, with the return thereof, the concord, note, and foot of every such fine, the proclamations thereupon, and the licence to agree, and also every original writ of entry *in the post*, or other writ, whereupon any common recovery shall hereafter be suffered or passed, with the returns of the same writs, and the writs of summons *ad warrantizandum*, with the returns thereof, and every warrant of attorney, as well of every demandant and tenant, as vouchee, shall and may be inrolled in rolls of parchment, to be of record forever, and to remain in the safe custody of the clerk of the supreme court, and his successors. And that the said inrollments shall be of as good force and validity in law, to all intents and purposes, as the same writs, concords, notes, *ket*, and warrants of attorney ought to be by law. *And*

Writs & proceedings to be inrolled.

further, That the original writ whereupon any fine shall be levied, with the return thereof, the warrants of attorney, if there be any, taken before any either of the justices of the supreme court, the licence to agree, and concord of every fine, shall be inrolled upon one and the same roll ; and the writs of *dedimus protestatem*, if there be any, with the returns thereof, and the note and foot of the same fine shall be inrolled upon separate rolls.

Foot of the
fine to be re-
corded in the
county where
the lands lie :

Note thereof
on the door of
the court
house :

Under a pe-
nalty.

No fine or re-
covery rever-
sed for want
of form ;

Nor unless a
writ of error
be brought in
five years.

VIII. And for the more easy discovery of fines, and the security of purchasers ; *Be it further enacted by the authority aforesaid*, That the counterpart of the foot of every fine hereafter to be levied, which is to be delivered to the party, shall be signed by one of the judges of the said supreme court, and by the clerk of the said court, and shall be recorded by the clerk of the city or county where the lands or tenements comprised in the same fine shall be situated, in a book to be by him kept for that purpose, within one year next after the engrossing of the same fine, at the expence of the party to whom the same shall be levied. And that the respective clerks of every city and county of this state for the time being shall, without fee or reward, immediately after recording the same, make and write, or cause to be made or written, a table or note, wherein shall be contained the contents of the same fine, so recorded in their respective offices ; That is to say, The names of the parties, and description of the lands and tenements comprised in such fine, and the time of levying the same ; and shall, on the first day of the next general sessions of the peace for the same city or county, affix the same on the principal door of the court-house of the same city or county, and see that the same continue there during the same sessions, upon pain that every clerk offending therein, shall forfeit the sum of ten pounds ; one moiety thereof to the people of this state, and the other moiety to him or them who will sue for the same in any court of record, by action of debt, bill, plaint or information.

IX. *And be it further enacted by the authority aforesaid*, That no fines, proclamations upon fines, or common recovery, heretofore had, levied, suffered or passed, or hereafter to be had, levied, suffered or passed, shall be reverfeable by any writ of error, for any rasure, interlining, misentring of any warrant of attorney, or of any proclamation, misreturning or not returning of the sheriff, or other want of form in words, and not in matter of substance.

X. *And be it further enacted by the authority aforesaid*, That no fine or common recovery shall hereafter be reversed or avoided, for any error or defect therein, unless the writ of error, or suit for reversing such fine or recovery, be commenced or brought, and prosecuted with effect, within five years after such fine levied, or recovery suffered ;

Provided always, That if any person who is or shall be entitled to any such writ of error as aforesaid, shall, at the time of such title accrued, be within the age of twenty-one years, or covert of baron, or imprisoned, or not of sound mind, or out of this state, then such person, or his or her heirs, notwithstanding the said five years expired, shall and may bring his, her or their writ of error, for reversing any such fine or recovery, so as the same be brought within five years after his or her full age, discovery, enlargement out of prison, coming of sound mind, or coming within this state, but not afterwards, or otherwise.

C H A P. XLIV.

An ACT for the Prevention of Frauds.

Passed 26th February, 1787.

I. *BE it enacted by the People of the State of New-York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same*, That all deeds of gift, and conveyances of goods and chattels, made or to be made in trust to the use of the person or persons making the same deed of gift or conveyance, shall be, and hereby are declared to be void and of none effect.

Conveyances
in trust to the
grantor void.

II. And for the avoiding and abolishing of all feigned, covenous and fraudulent feoffments, gifts, grants, alienations, conveyances, bonds, suits, judgments and executions, as well of lands and tenements, as of goods and chattels, which have been and are devised and contrived of malice, fraud, covin, collusion, or guile, to the end, purpose and intent to delay, hinder or defraud creditors and others, of their just and lawful actions, suits, debts, accounts, damages, penalties, forfeitures and demands, not only to the let or hindrance, of the due course and execution of law and justice, but also to the overthrow of all true and plain dealing, bargaining and cheifance, between man and man, without which no commonwealth or civil society can be maintained or continued; *Be it further enacted by the authority aforesaid*, That all and every feoffment, gift, grant, alienation, bargain and conveyance of lands, tenements, hereditaments, goods and chattels, or of any of them, or of any lease, rent, common or other profit or charge out of the same lands, tenements, hereditaments, goods or chattels, or any of them, by writing or otherwise, and all and every bond, suit, judgment and execution, at any time had or made, or hereafter to be had or made, to or for any intent or purpose before declared and expressed, shall be from henceforth deemed and taken (only as against that person or persons, his, her or their heirs, successors, executors, administrators and assigns, and every

To defraud
creditors void

of them, whose actions, suits, debts, accounts, damages, penalties, forfeitures and demands, by such guileful, covenantous or fraudulent devices and practices as aforesaid are, or shall, or may be in any wise disturbed, hindered or defrauded) to be clearly and utterly void, frustrate and of none effect; any pretence, colour, feigned consideration, expressing of use, or any other matter or thing to the contrary notwithstanding.

To defraud
purchasers
void.

III. And forasmuch as not only the people of this state, but divers of the citizens thereof, and bodies politic and corporate, after conveyances obtained or to be obtained, and purchases made or to be made, of lands, tenements, leases, estates and hereditaments, for money or other good considerations, may have, incur and receive great loss and prejudice, by reason of fraudulent and covenantous conveyances, estates, gifts, grants, charges and limitations of uses heretofore made, or hereafter to be made, of, in or out of the lands, tenements or hereditaments so purchased, or to be purchased; which said gifts, grants, charges, estates, uses and conveyances were, or hereafter shall be meant and intended by the parties who so make the same, to be fraudulent and covenantous, of purpose and intent to deceive such as have purchased, or shall purchase the same; or else by the secret intent of the parties, the same to be to their own proper use, and at their free disposition, coloured nevertheless by a feigned countenance, and shew of words and sentences, as though the same were made *bona fide*, for good causes, and upon just and lawful considerations; For remedy of which inconveniences, and for the avoiding of such fraudulent, feigned and covenantous conveyances, gifts, grants, charges, uses and estates, and for the maintenance of upright and just dealing in the purchasing of lands, tenements and hereditaments; *Be it further enacted by the authority aforesaid*, That all and every conveyance, grant, charge, lease, estate, incumbrance and limitation of use or uses, of, in or out of any lands, tenements or other hereditaments whatsoever, had or made, or hereafter to be had or made, for the intent and purpose to defraud and deceive such person or persons, bodies politic or corporate, as have purchased or shall hereafter purchase any estate of inheritance, or for life, lives or years, of or in the same lands, tenements or hereditaments, or any part or parcel thereof, so before conveyed, granted, leased, charged, incumbered or limited in use, or to defraud and deceive such as have or shall purchase any rent, profit or commodity, in or out of the same, or any part thereof, shall be deemed and taken (only as against the person and persons, bodies politic and corporate, his, her and their heirs, successors, executors, administrators and assigns, and against all and every other person and persons, lawfully having or claiming by, from or under them, or any

of them, who have purchased, or shall hereafter to purchase, for money or other good consideration, the same lands, tenements or hereditaments, or any part or parcel thereof, or any rent, profit or commodity in or out of the same) to be utterly void, frustrate and of none effect; any pretence, colour, feigned consideration, or expressing of any use or uses to the contrary notwithstanding.

IV. *And be it further enacted by the authority aforesaid,* That all and every the parties to such feigned, covenous or fraudulent seoffment, gift, grant, alienation, bargain, lease, charge, conveyance, bonds, suits, judgments, executions, and other things before expressed, or being privy or knowing of the same, or any of them, who at any time hereafter shall wittingly and willingly put in use, avow, maintain, justify or defend the same, or any of them, as true, simple and done, had or made *bona fide*, and upon good consideration, or shall alien or assign any the lands, tenements, goods, leases or other things before mentioned, to him, her or them conveyed as aforesaid, or any part thereof, shall incur the penalty and forfeiture of one year's value of the said lands, tenements and hereditaments, leases, rents, commons or other profits, of or out of the same, and the whole value of the said goods and chattels, and also so much money as is or shall be contained in any such covenous and feigned bond; the one moiety whereof to be paid to the people of the state of New-York, and the other moiety to the party or parties grieved by such feigned and fraudulent seoffment, gift, grant, alienation, bargain, conveyance, bonds, suits, judgments, executions, leases, rents, commons, profits, charges, and other things aforesaid; to be recovered in any court of record, by action of debt, bill, plaint or information.

Penalty for
justifying such
conveyances.

V. *And be it further enacted by the authority aforesaid,* That if any person or persons have made, or hereafter shall make any conveyance, gift, grant, demise, charge, limitation of use or uses, or assurance, of, in or out of any lands, tenements or hereditaments, with any clause, provision, article or condition of revocation, determination or alteration, at his, her or their will or pleasure, of such conveyance or assurance, gift, grant, limitation of use or uses, or estates, of, in or out of the said lands, tenements or hereditaments, or of, in or out of any part or parcel of them, contained or mentioned in any writing, deed or indenture; and after such conveyance, gift, grant, demise, charge, limitation of use or uses, or assurance so made or had, shall or do bargain, sell, demise, grant, convey or charge the same lands, tenements or hereditaments, or any part or parcel thereof, to any person or persons, bodies politic and corporate, for money, or other good consideration paid or given (the said first conveyance, assurance, gift, grant, demise, charge or limitation, not by him, her

Grants of land
with power of
revocation
void, if afterwards
sold.

or them revoked, made void or altered, according to the power and authority reserved or expressed unto him, her or them, in and by the said secret conveyance, assurance, gift or grant) then the said former conveyance, gift, grant, demise, charge, limitation of use and uses, and assurance, as touching the said lands, tenements and hereditaments, so after bargained, sold, demised, granted, conveyed or charged, against the said bargainees, vendees, lessees, grantees, and every of them, their heirs, successors, executors, administrators and assigns, and against all and every person or persons who have or claim, or shall or may lawfully have or claim any thing, by, from or under them, or any of them, shall be deemed, taken and adjudged to be void, frustrate and of none effect, by virtue and force of this act.

This act not
to affect bona
fide conveyan-
ces or mort-
gages ;

VI. *Provided always, and be it further enacted by the authority aforesaid,* That this act, or any thing therein contained, shall not extend, or be construed to impeach, defeat, make void or frustrate any conveyance, assignment of lease, assurance, grant, charge, lease, estate, interest or limitation of use or uses, of, in, to or out of any lands, tenements or hereditaments, goods or chattels, at any time heretofore had or made, or hereafter to be had or made, upon or for good consideration, and *bona fide* to any person or persons, bodies politic or corporate, nor having, at the time of such conveyance or assurance to him, her or them made, any manner of notice, or knowledge of such covin, fraud or collusion, as is aforesaid ; and that no lawful mortgage, made or to be made, *bona fide*, and without fraud or covin, upon good consideration, shall be impeached or impaired by force of this act, but the same shall stand in like force and effect, as the same should have done, if this act had never been made ; any thing before in this act to the contrary in any wise notwithstanding.

For common
recoveries ;

VII. *And whereas* sundry common recoveries of lands, tenements and hereditaments have been had, and hereafter may be had, against a tenant of the freehold, the reversion or remainder, or the right of the reversion or remainder, then being in some other person or persons ; *Be it further enacted by the authority aforesaid,* That every such common recovery heretofore had, and hereafter to be had, of any lands, tenements or hereditaments, shall, as touching such person and persons who then had any reversion or remainder, or right of reversion or remainder, and against the heirs of every of them, stand, remain, and be of such like force and effect, and of none other, as the same should have been if this act had never been made.

Nor any ven-
ueurs in writs
of formoden-

VIII. *Provided always, and be it further enacted by the authority aforesaid,* That this act, or any thing herein before contained shall not extend to make void any estate or con-

reynce, by reason whereof any person or persons shall use any voucher in any writ of *formedon*, now depending, or hereafter to be depending; but that all and every such vouchers in any writ of *formedon* shall stand and be in like force and effect, as if this act had never been made.

IX. And for the prevention of many fraudulent practices, which are commonly endeavoured to be upheld by perjury and subornation of perjury; *Be it further enacted by the authority aforesaid*, That all leases, estates, interest of freehold, or terms of years, or any uncertain interests of, in, to or out of any messuages, manors, lands, tenements or hereditaments, made or created, or hereafter to be made or created, by *livery and seisin* only, or by *parol*, and not in writing, and signed by the parties so making and creating the same, or their agents thereunto lawfully authorised by writing, shall have the force and effect of leases, or estates at will only, and shall not, either in law or equity, be deemed or taken to have any other or greater force or effect; any consideration for making any such *parol* leases, or estates, or any former law or usage to the contrary notwithstanding. *Except nevertheless*, All leases not exceeding the term of three years, from the making thereof, whereupon the rent reserved to the landlord during such term, shall amount unto two third parts, at the least, of the full improved value of the thing demised.

Estates by livery and seisin only or by parol to be deemed estates at will;

Except leases for three years.

X. And be it further enacted by the authority aforesaid, That no leases, estates or interests, either of freehold, or terms of years, or any uncertain interest of, in, to or out of any messuages, manors, lands, tenements or hereditaments, shall at any time hereafter be assigned, granted or surrendered, unless it be by deed or note in writing, signed by the party so assigning, granting or surrendering the same, or their agents thereunto lawfully authorised by writing, or by act and operation of law.

No interest in lands granted or assigned but in writing

XI. And be it further enacted by the authority aforesaid, That no action shall be brought whereby to charge any executor or administrator, upon any special promise to answer damages out of his own estate, or whereby to charge the defendant, upon any special promise, to answer for the debt, default or miscarriages of another person, or to charge any person upon any agreement made upon consideration of marriage, or upon any contract or sale of lands, tenements or hereditaments, or any interest in or concerning them, or upon any agreement that is not to be performed within the space of one year from the making thereof, unless the agreement upon which such action shall be brought, or some memorandum or note thereof shall be in writing, and signed by the party to be charged therewith, or some other person thereunto by him or her lawfully authorised.

When promises shall be in writing.

Declarations
of trusts to be
in writing ;

XII. *And be it further enacted by the authority aforesaid,* That all declarations or creations of trusts or confidences, of any lands, tenements or hereditaments, shall be manifested and proved by some writing, signed by the party who is or shall be by law enabled to declare such trust, or by his last will in writing, or else they shall be utterly void, and of none effect : But all declarations or creations of uses, trusts or confidences of any fines, or common recoveries of any lands, tenements or hereditaments, manifested and proved, or which hereafter shall be manifested and proved, by any deed already made, or hereafter to be made, by the party who is or shall be by law enabled to declare such uses or trusts, after the levying or suffering of any such fines or recoveries, are, and shall be as good and effectual in the law, as if this clause of this act had not been made.

Except trusts
by operation
of law.

XIII. *Provided always, and be it further enacted by the authority aforesaid,* That where any conveyance hath been or shall be made, of any lands, tenements or hereditaments, by which a trust or confidence shall or may arise or result, by implication or construction of law, or be transferred or extinguished by act or operation of law, then, and in every such case, such trust or confidence shall be of the like force and effect as the same would have been, if this act had not been made.

Assignments
of trusts to be
in writing.

XIV. *And be it further enacted by the authority aforesaid,* That all grants and assignments of any trust or confidence, shall likewise be in writing, signed by the party granting, or assigning the same, or by his or her last will in writing, or else shall likewise be utterly void, and of none effect.

Contracts for
the sale of
goods to £. 10
and upwards
when binding.

XV. *And be it further enacted by the authority aforesaid,* That no contract for the sale of any goods, wares and merchandize, for the price of ten pounds or upwards, shall be allowed to be good, except the buyer shall accept part of the goods so sold, and actually receive the same, or give something in earnest to bind the bargain, or in part of payment, or that some note or memorandum in writing of the said bargain, be made and signed by the parties to be charged by such contract, or their agents thereunto lawfully authorized.

C H A P. L.

An ACT for giving further Remedy, and regulating the Process and Proceedings in Assises, and other Actions.

Passed 12th March, 1787.

Where demands
may
have writs of
entry in the post.

I. *BE it enacted by the People of the State of New-York,* represented in Senate and Assembly, and it is hereby enacted by the authority of the same, That if the alienations whereupon writs of entry ought to be granted, happen to be made in so many degrees, that by reason

thereof the writ of entry cannot be made in the usual form, mentioning the degrees, then the demandants shall have a writ to recover their seisin, without making mention of the degrees into whose hands soever the tenements shall happen to come by such alienations; but writs of entry without mentioning the degrees, shall not be maintained but in cases where the writs making mention of the degrees, cannot lie or hold place.

II. *And be it further enacted by the authority aforesaid,* That if any person hath died, or shall die, leaving several persons his or her heirs, either in the same degree, or in different degrees, all such heirs shall or may recover in one writ or action, as heirs of the deceased person.

Several heirs may recover in one writ.

III. *And be it further enacted by the authority aforesaid,* That a writ of deceit shall be maintainable and hold place, as well in the case of garnishment touching plea of land, where such garnishment is given, as in the case of summons in a plea of land.

Writ of deceit where maintainable.

IV. *And whereas* formerly, if any person had lost his or her lands or tenements by default, he or she had no other recovery but by writ of right, which was not maintainable by any who could not claim of mere right as tenants for term of life, where a reversion is reserved; Therefore, *Be it further enacted by the authority aforesaid,* That their default shall not be so prejudicial, but that they may recover their estate by another writ than by writ of right, if they have right; and for recovery of land for term of life, lost by default, a writ shall be made in this form:

How persons losing by default may recover:

COMMAND A, That justly and without delay, he render to B, one message with the appurtenances, in C, which he claims to hold for term of his life, and of which the aforesaid A, doth deforce him.

Form of writ.

V. *And be it further enacted by the authority aforesaid,* That in cases of nuisance, the plaintiff shall not go without remedy, because the land is transferred to another. *And further,* That where the writ is granted against him or her who hath levied or shall levy the nuisance, the writ shall be made as hath been heretofore used, in the following form:

Remedy in cases of nuisance.

A, B, hath complained to us, That C, D, unjustly, and without judgment, hath erected (or made or levied) a house (or a wall, sink, pond, or whatever other thing it may be) to the nuisance of his freehold.

Form of writs

And if such things so levied, erected or made, be aliened from one to another, the writ shall be thus:

A, B, hath complained to us, That C, D, and E, F, have erected.

And further, That all writs of nuisances shall from henceforth, be made returnable, and be determined in the nature of assises, either in the supreme court, or at the circuit court in the county where such nuisances shall happen.

Where to be tried.

Writs to be
devised in
chancery.

VI. *And be it further enacted by the authority aforesaid,* That whensoever in one case a writ is found and used in the chancery, and in a like case falling under like law, and requiring like remedy, there is none found, a proper writ shall be devised and made in such case. And that suitors may not go without remedy, they shall have writs according to their cases.

In what cases
writs of novel
disseisin shall
be.

VII. *And be it further enacted by the authority aforesaid,* That a writ of *novel disseisin* shall lie and be maintainable for estovers of wood, and for any profit to be taken in woods; for a corody; for delivery of corn and other victuals and necessities, to be received yearly, in a place certain; for toll, passage, and such like, to be taken in places certain; and for offices in fee, or for life, as well as for lands and tenements; and for common of pasture, fishing and such like commons, which any person hath or shall have appendant to freehold, or without freehold, by special deed, at the least for time of life; and in all the cases aforesaid, according to the accustomed manner, the writ shall express the thing in demand to be a free tenement. And although it has been doubted whether a remedy could be had by this writ, where one feedeth the several pasture of another, it is hereby declared, that a good and sure remedy is given in that case, by the said writ. *And further,* When any person holding for term of years, or in ward, doth alien the same in fee, and by such alienation the freehold is transferred to the feoffee, then remedy shall or may be by writ of *novel disseisin*, and as well the feoffee as the feoffee shall be had for disseisors, so that during the life of any of them, the said writ shall hold place; and if by the death of the parties the remedy fail by that writ, the remedy may be had by writ of entry.

Writs of entry.

Penalty for
false pleading
in assize.

VIII. *And be it further enacted by the authority aforesaid,* That if any person or persons named disseisors in any writ of assize of *novel disseisin*, alledge any false exception, whereby the taking of the assize may be deferred, as that at another time an assize of the same land passed between the said parties, or that a writ of a higher nature is depending between the same parties of the same land, and upon these, and like matters, do vouch rolls or records to warranty; then, and in every such case, if he or she who shall alledge such exception, fail of the warranty that he or she hath vouched, at the day to him or her given, he or she shall be adjudged for a disseisor, without taking the assize, and shall restore the damages before enquired of, or after to be enquired of, to the double. And if such exception be alledged by a bailiff, the taking of the assize shall not be delayed therefore, nor the judgment upon the restitution of the lands and damages. But if the master of such bailiff that was absent, come afterwards before the same justices or justice who took the assize, and offer

Plea by
bailiff.

to prove by record or rolls, that at another time an assise passed between the same parties of the same lands, or that the plaintiff at another time did withdraw his or her suit in a like writ, or that a plea is depending by a writ of a higher nature, a writ of *venire facias* shall be granted unto him, to cause the same record to be brought; and when he hath the same, and the justices do perceive that the record so shewed by him, would have been so available before the judgment, that the plaintiff, by force of the same, should have been barred of his or her action, the justices shall immediately cause the party who first recovered, to be warned to appear at a certain day, at which the defendant shall have again his or her seisin and damages, if he or she before paid any by the first judgment given, which shall be restored to him or her to the double as aforesaid; and in the same manner, if the defendant against whom any assise shall pass in his or her absence, shew any deeds or releases upon which the jury were not examined, nor could be examined, because no mention was made of them in pleading, and by probability might be ignorant of them, the justices, upon the sight of these writings, shall cause the party who first recovered, to be warned to appear at a certain day, and shall cause the jurors of the same assise to come. And if such defendant shall verify those writings to be true, by the verdict of a jury, or by inrollment, he or she who purchased the assise contrary to his or her own deed, shall restore to him or her the damages before recovered as aforesaid.

Remedy for principal;

For defendant if assise pass against him when absent.

IX. *And whereas*, many persons do disseise others of their tenements, and after such disseisin done, make divers alienations and feoffments thereof, whereby the said disseisees, and other demandants and their heirs, are delayed, of their recovery; Therefore, *Be it further enacted by the authority aforesaid*, That the said disseisees shall, from henceforth, have their recovery against the first disseisors, during their lives, if they take the profits at the time of the suit commenced, as well of the lands and tenements, as of their double damages, without having any regard to such alienations, gifts or feoffments. *And further*, That this shall hold place in every other action, in plea of land, where such feoffments be made by fraud or collusion, for the demandants to have their recovery against such first feoffors, if they thereof take the profits.

Suits against disseisors.

X. *And be it further enacted by the authority aforesaid*, That no sheriff or other officer, by colour of his office, without special warrant or commandment, or authority certain pertaining to his office, disseise any person of his or her freehold, nor of any thing belonging to his or her freehold. And if any do, it shall be lawful for the person disseised to sue at the common law, by writ of *novel disseisin*; and he who shall be convicted thereof, shall pay

Pentry on sheriff or other officer to disseise any one without writ.

double damages to the plaintiff, and be further punished by fine or imprisonment, at the discretion of the justices.

Any person disseised by virtue of grants from the state without title to have special assise & treble damages.

XI. *And be it further enacted by the authority aforesaid,* That in case any lands or tenements have been, or shall be granted by letters patent, without title found by inquest or otherwise, where the entry of the people of this state is not given by law, they who shall be put out or disseised of their freehold, shall or may have a special assise granted by the chancellor, without any suit to the people of this state in that behalf to be made; and if the parties or persons who have such letters patent, do pray in aid, a writ of *procedendo* shall be granted by the chancellor; and in case they who be so put out or disseised, recover against the persons having such patents, they who be so put out or disseised shall recover their treble damages.

On a forcible entry special assise to be granted and disseisee to recover double damages,

XII. *And whereas* divers persons do make forcible entries into the lands and tenements of others, and put the possessors out of the same, claiming sometimes in their own right, where their entry is not lawful, and sometimes in the right of others; where they have nothing in reversion, in right nor in *demesne*, and there is not any affinity or consanguinity between them, and those in whose right they have entered, and sometimes take away the goods and chattels of the possessor; Therefore, *Be it further enacted by the authority aforesaid,* That if any person, of what estate or condition soever he or she may be, hath made, or shall make any such forcible entry, in his or her own right, or to his or her own use, or in the right, or to the use of any other, by way of maintenance, or take or carry away any goods, after such forcible entry, from the possessor of the freehold, then, and in every such case, if the party grieved, or other lawful man for him or her, will make affidavit that the entry was made in such forcible manner, the chancellor shall have power, by his discretion, to grant a special assise in this case, to the party aggrieved, of whatsoever value the tenements may be; and if such disseisor be convicted of such disseisin, made in such forcible manner, he or she shall yield to the party grieved, his or her double damages, and be further punished by fine or imprisonment, according to the discretion of the justices. And if such disseisor be convicted by the same assise, that he or she hath taken or carried away the goods or chattels of such disseisees, the justices of assise shall have power to hear and determine, as well for the people of this state, as for the party, of the goods and chattels so carried away, and to award to the party grieved, his or her damages. *And further,* That in every such special assise, one at least of the justices of the supreme court, be named as one of the justices to take such assise, and that no writ of *supersedeas* be granted to the contrary of such special assises.

And damages for goods carried away.

Justices of assise.

XII. *And be it further enacted by the authority aforesaid,* That if in any writ of assise, the sheriff of the same county is or shall be named one of the disseisors, and the tenants in the same assise, or any of them, will aver that the said sheriff is not, nor ever was disseisor nor tenant of the tenements in demand, but was named a disseisor by collusion, the averment shall be received; and if it be found by the said assise, that the said sheriff is not, nor ever was disseisor nor tenant of the tenements in demand, but was named disseisor by collusion, then the justices shall cause the said writ so purchased, or to be purchased, in form aforesaid, to be abated and quashed; and the plaintiff or plaintiffs shall pay double costs thereupon to be taxed.

Writ to abate where sheriff is named a disseisor by collusion,

And defendant to recover double costs.

XIV. *And be it further enacted by the authority aforesaid,* That an assise of novel disseisin may, from henceforth, be granted of rent in arrear, due of tenements in divers counties, to be holden in the confine of the counties within which the tenements be; and thereupon the assise shall be taken and tried by jurors of the said counties, in the same manner as ought to be done of a common of pasture in one county, and appendant to tenements in another county; and that as well of disseisins done in times past, as of disseisins yet to be done; and that writs thereupon, at the suit of the plaintiff, be made from henceforth in the chancery in due form, without any manner of contradiction; but in all such assises, one at the least of the justices of the supreme court, shall be named as one of the justices to take such assises.

Novel disseisin for rent of tenements in different counties.

XV. *And whereas* in cases where dower is or shall be demanded, of lands or tenements recovered against the husband by default or covin, and when the wife being endowed, loseth her dower by default, and when tenants by the curtesy, or for term of life, must demand their land lost by default, divers actions do concur, and when it is come to that point that the tenants must be compelled to shew their right, they cannot make answer without them to whom the reversion or remainder of right belongeth; Therefore, *Be it further enacted by the authority aforesaid,* That it shall be lawful for them to vouch to warranty, as if they were tenants, if they have a warranty: And when the warrantor hath warranted, plea shall pass between him or her that is seised, and the warrantor, according to the tenor of the writ that the tenant purchased before, and by which he or she recovered by default. And so from many actions, they shall at length resort to one judgment, which is this; that the demandant shall recover his or her demand, or that the tenant shall go quit; and if the action of such a tenant who is compelled to shew his right, be by writ of right, although the great assise cannot be joined by the words accustomed, yet it shall be joined by words convenient; for when the tenant in that he or she sheweth

Tenants in dower and by the curtesy to recover their lands lost by default.

his or her right, which belongeth to him or her by the writ which he or she before purchased instead of a demandant, the warrantor may well defend the right of the tenant who is accounted in place of the demandant as aforesaid, and put himself or herself upon the great assise, and pray recognition to be made whether he or she hath more right to the land in demand, than the party aforesaid; or otherwise the great assise may be joined thus: Such an one defends the right, and so the warrantor may defend the right, and acknowledge the seisin of his or her ancestor, and put himself or herself upon the great assise, and pray recognition to be made whether he or she hath more right in the land, as in that whereof he or she enjoyed such a one, or that such a one released and quit claimed, than the aforesaid party.

Vouchee not
present to be
summoned.

XVI. *And be it further enacted by the authority aforesaid,* That when any person not present in court, shall be vouched to warranty in a plea of land or tenement, the party so vouched shall have reasonable summons, according to the discretion of the justices; and if the demandant will aver that the person vouched is dead, or that there is no such person, such averment shall be received and tried without delay.

Proceedings
in cases of
voucher and
where it is
counterpleaded.

XVII. *And be it further enacted by the authority aforesaid,* That in writs concerning possession, whereby lands or tenements are demanded, which ought to descend, remain, revert, or fall, by the death of any ancestor, or otherwise, if the tenant vouch to warranty, and the demandant counterpleadeth him or her, and will aver by assise, or by the country or otherwise, as the court will award, that the tenant, or his or her ancestor or predecessor, whose heir he or she is, was the first that entered after the death of him or her of whose seisin he or she demandeth, the averment of the demandant shall be received, if the tenant will abide thereupon; and if not, he or she shall be further compelled to another answer, if he or she have not his or her warrantor present, who will warrant him or her freely and immediately enter into the warranty; and the demandant shall have the like exceptions against the warrantor, if he or she will vouch further, as he or she had before against the first tenant; and in all manner of writs of entry, which make mention of degrees, none shall vouch out of the line. *And further,* That as well in the writs aforesaid, as in writs of right, if the tenant vouch to warranty, and the demandant will counterplead him or her, and be ready to aver by the country that he or she, who is so vouched to warranty, nor his or her ancestors or predecessors, had never seisin of the land or tenement demanded, nor fee nor service by the hand of his or her tenant, or his or her ancestors or predecessors, since the time of him or her on whose seisin the demandant declareth,

until the time that the writ was purchased, and the plea moved, thereby he, she or they might have enfeoffed the tenant, or his or her ancestor or predecessors, then, whether the party vouched be present or absent, the averment of the demandant shall be received, if the tenant will abide thereupon; if not, the tenant shall be further compelled to another answer, and the demandant shall have his or her exceptions against the warrantor, as he or she had before against the first tenant. *And further*, If the tenant hath a deed that compriseth warranty of another man who is bound in none of the cases before mentioned, to the warranty of an older degree, his or her recovery by a writ of warranty of charters out of the chancery, shall be saved to him or her, at what time soever he or she will purchase it, but the plea shall not be delayed therefore.

XVIII. *And be it further enacted by the authority aforesaid*, That when any person shall demand lands or tenements against another, and the party impleaded voucheth to warranty, and the warrantor denieth his or her warranty, and it be found that the vouchee is bound to warranty by the law and custom of this state, then, in like manner as the tenant should lose the land or tenement in demand, in case where he vouched, and the vouchee could discharge himself of the warranty, in the same manner shall the warrantor lose, in case where he or she denieth his or her warranty, and it be tried against him or her, that he or she is bound to warranty. *And further*, That in all cases where an inquest shall be depending between the tenant and the warrantor, and the demandant will require a writ to cause the jury to come, it shall be granted.

Vouchee denying his warranty shall lose the land.

Demandant may have a writ on an issue between tenant and warrantor.

Proceedings in cases of re-disseisin.

XIX. *And be it further enacted by the authority aforesaid*, That if any person be disseised of his or her freehold, and shall recover seisin by assise of novel disseisin, or by confession of them that did the disseisin, and after the plaintiff hath had seisin delivered by the sheriff, if the said disseisors do again disseise the same plaintiff of the same freehold, and thereof be convicted, the plaintiff shall recover double damages, and the re-disseisors shall be also punished by fine and imprisonment, and shall be forthwith taken and committed, and kept in gaol until they shall have paid such damages and fine, and be thence delivered by due course of law. And the manner of proceeding in such case, shall be as follows: When the plaintiff shall come to the chancery, he or she shall have a writ directed to the sheriff, in which must be contained the plaint of disseisin upon the disseisin, and therefore it shall be commanded to the sheriff, that, taking with him the coroner of the county, or one of them, if there be more than one in the same county, and two or more justices of the peace in the same county, he go in his proper person, to the tenement or pasture whereof the plaint had been made, and before them, by

the first jurors, and other neighbours and lawful men, if the first recovery was by verdict, if not, then by neighbours and lawful men, he diligently thereof make inquisition; and if they find the plaintiff disseised again as aforesaid; then the sheriff shall do according to the provision aforesaid; but if it be found otherwise, then the plaintiff shall be amerced, and the others shall go quit. But no sheriff shall proceed in any such plaint, without a special writ. And in the same manner it shall be done to them who shall recover their seisin of any lands or tenements, by verdict, default, reddition or otherwise, in any real action, in any court of record, if they be afterwards disseised by the first deforceors, against whom they shall have recovered.

Remedy by
cessavit:

XX. *And be it further enacted by the authority aforesaid,* That if any person hath demised, or shall demise his or her lands, to any other person, and to his or her heirs, rendering a certain annual rent for the same, and he or she who holdeth the land so charged, letteth it lie fresh, so that the party can find no distress there by the space of two years, to compel the farmer to render, or to do as is contained in the writing or lease; then the two years being passed, the lessor or grantor, or his heirs or assigns, shall have an action to demand the land in *demesne*, by a writ out of the chancery in this form:

Form of writ.

COMMAND A, *That justly and without delay, he render to B, one messuage, with the appurtenances, in C, which the same B, demised to the aforesaid A, rendering therefore yearly, to the same B, (such a certain rent) and which to him ought to revert, because the aforesaid A, in paying the aforesaid rent, hath ceased by two years, as he saith.*

And if he or she against whom the land is demanded, come before judgment and pay the arrearages and the damages and costs, and find surety, such as the court shall think sufficient, to pay the rent from thenceforth, as is contained in the writing or lease, he or she shall keep the land; but if he or she neglect until it be recovered by judgment, he or she shall be barred forever; and, in like manner, if any withhold from any person, of whom he or she holds, his or her due and accustomed service, by two years; the person to whom the same is or shall be due, shall have an action to demand the lands in *demesne*, by a writ in this form:

COMMAND A, *That justly and without delay, he render to B, (such a tenement) which the aforesaid A holds of him by such certain service, and which to the aforesaid B, ought to revert, because the aforesaid A, in doing the service aforesaid, hath ceased by two years, as he saith.*

And further, That as well in the case of rent, as in the cases of services, writs of entry shall be made as aforesaid, for the heirs of the demandant, and against the heirs of

the tenant, and against them to whom such land shall be aliened.

XXI. *And be it further enacted by the authority aforesaid;* That from henceforth view shall not be granted to the tenant, but in case where a view of the land is necessary; and that if one lose land by default, and he or she who loseth shall purchase a writ to demand the same land, and in case where one by an exception dilatory abateth a writ after the view of the land, as by non-tenure, misnaming of the town, or such like, and the demandant purchaseth another writ; in these cases the view shall not be granted, if the party had view in the first writs: And in a writ of dower, where the dower in demand is of land that the husband aliened to the tenant, or his or her ancestors, where the tenant ought not to be ignorant what land the husband did alien to him or her, or to his or her ancestor, though the husband did not die seised, yet the view shall not be granted to the tenant. And in a writ of entry, that is abated because the demandant misnamed the entry, if the demandant purchaseth another writ of entry, if the tenant had view in the first writ, he shall not have it in the second. And in all writs where lands are or shall be demanded by reason of a demise made by the demandant, or his or her ancestor, to the tenant, and not to his or her ancestor, as that which the demandant, or his or her ancestor, being within age, not of sound mind, or in prison, and such like, demised to the tenant, view shall not be granted; but if the demise was to the ancestor of the tenant, view shall be granted, as hath been done before.

Where a view shall be granted.

XXII. *And be it further enacted by the authority aforesaid;* That in all writs of *cousinage, aile* and *besaile*, if the tenant will plead that the plaintiff is not the next heir of the ancestor, by whose death he or she demandeth the land, such plea shall be received, and the matter enquired of, and the court shall proceed to judgment, according to the verdict thereupon to be given.

In writs of *cousinage, aile & besaile* tenant may plead that plaintiff is not the next heir.

XXIII. *And be it further enacted by the authority aforesaid;* That no writ shall be abated by the exception of non-tenure of parcel, but for the quantity of the non-tenure so alleged.

No writ to abate by non-tenure of parcel.

XXIV. *And be it further enacted by the authority aforesaid;* That if any person shall purchase a writ of *novel disseisin*, and he or she against whom the writ is brought as principal disseisor, dieth before the assise be passed, then the plaintiff shall have his or her writ of entry upon disseisin, against the heir or heirs of the disseisor or disseisors, of what age soever such heir or heirs may be; and likewise the heir or heirs of the disseisee, shall have his, her or their writ or writs of entry, against the disseisors, or their heirs, of what age soever they be, if

Non age in writs of entry, upon disseisin in the per, not to be allowed.

the disseisee die before he hath purchased his writ, so that for the non-age of the heirs of the one part or other, the writ shall not be abated, nor the plea delayed.

In most d'an-
cestor inquest
not delayed
by non age
of the plain-
tiff.

XXV. *And be it further enacted by the authority aforesaid,* That if a child within age be holden from his or her inheritance, after the death of his or her father, mother, brother, sister, cousin, grand father or great-grand-father, whereby such infant is driven to his or her writ, and his or her adversary cometh into the court, and for answer alledgeth a feoffment, or pleadeth some other thing by which the court would formerly award the age, and defer the inquest until the full age of the infant, from henceforth, in every such case, the inquest shall not be deferred until the full age of the infant, but shall pass as if he or she was of full age.

Tenants in
assise how to
appear.

XXVI. *And be it further enacted by the authority aforesaid,* That all tenants in assise of novel disseisin, may either appear and plead in person, or make and appear and plead by their attornies, or plead by bailiffs at their pleasure.

Panels when
to be made.

XXVII. *And be it further enacted by the authority aforesaid,* That the panels of the assises shall, in all cases, be arrayed, and a copy thereof delivered by the sheriff, or his deputy, to the plaintiffs, tenants and defendants, if they demand the same, at least six days before the circuit court, or session of the justices at which the same shall be returnable, upon pain that every sheriff or other officer neglecting his duty herein, shall forfeit, for every offence, to the party grieved, the sum of twenty pounds; to be recovered, with costs of suit, in any court of record, by action of debt, bill, plaint or information.

Plaintiff in as-
sise may
abridge his
plaint of any
part.

XXVIII. *And be it further enacted by the authority aforesaid,* That the plaintiff in every assise may, from henceforth, at his pleasure, sever and abridge his or her plaint of a moiety, or any other part or parts whereunto any bar is or shall be pleaded, in such like manner as he or she might do in case the pleas in bar had been made, and divided to any certainty or number of acres in the plaint; and that the plaint for the residue of the part or parts of the lands, not abridged, shall be and stand good and effectual in the law.

Tenant to
commit no
waste pending
the suit.

XXIX. *And be it further enacted by the authority aforesaid,* That from the time any plea shall be moved by writ, the tenant shall not make any waste or *estrepement* of land in demand, pending the suit; and if he or she do, the court wherein the plea depends, shall cause the land in demand to be kept at the suit of the demandant.

Of the test
and return of
process.

XXX. *And be it further enacted by the authority aforesaid,* That all writs of summons, and attachments, and other process in pleas of lands, shall, from henceforth, have full fifteen days at the least between the days of the te

and the days of the return thereof. *And further*, That in all writs of dower, after issue joined, it shall not be needful or requisite to have above fifteen days between the test and return of the *venire facias*, or any other process to be sued out for the trial of the said issue, but that the writ of *venire facias*, and other process after issue joined, and until judgment be given, having only fifteen days between the test and the return thereof, shall be good and effectual. *And also*, That all writs of summons to the warranty, and all other process in any real action, being tested the last day, or any other day in any term, and returnable the first day, or any other day in the next succeeding term, shall be good and effectual.

XXXI. And for avoiding secret summons in real actions, without convenient notice to the tenants of the freehold ; *Be it further enacted by the authority aforesaid*, That after every summons upon the lands in any real action, and fourteen days at the least before the day of the return thereof, the sheriff to whom such summons shall be directed, shall make, or cause proclamation of the same summons to be made, at or near the most usual door of the church of the town or place where the land whereupon the summons was made doth lie, upon a Sunday, immediately after divine service and sermon, if any there be ; and if there be more than one church in such town, then such proclamation shall be made, in form aforesaid, at or near to the most usual door of the church nearest to the said lands ; and if there be no church in such town, then such proclamation shall be made in form aforesaid, at or near to the most usual door of the church in the same county nearest to the said land ; and such proclamation so made as aforesaid, shall be returned, together with the names of the summoners ; and if such summons shall not be proclaimed and returned as aforesaid, then no *grand cape* to be awarded, but an *alias* or *pluries* summons, as the case shall require, until a summons and proclamation shall be duly made and returned as aforesaid.

Summons
proclaimed at
the church
door.

XXXII. And for avoiding delays in all manner of writs and attachments ; *Be it further enacted by the authority aforesaid*, That if the tenant or defendant after the first attachment returned, make default, the great distress shall be immediately awarded, and the tenant or defendant shall be distrained from time to time, until he or she do appear, or comply with the purpose of such writ. And if the sheriff do not make a sufficient return to any such writ, at the day of the return thereof, he shall be amerced.

After attach-
ment distress
to be awarded.

XXXIII. *And whereas* the process by *distingas* as heretofore used, is dilatory and expensive ; For remedy whereof, *Be it further enacted by the authority aforesaid*,

Issues levied
may be sold.

That the court out of which the writ proceeds, may order the issues levied from time to time to be sold, and the monies arising thereby to be applied to pay such costs to the plaintiff as the court shall think just, under all the circumstances to order, and the surplus to be retained until the defendant or tenant shall have appeared, or other purpose of the writ be answered, and when the purpose of the writ is answered, that then the said issues shall be returned, or if sold, what shall remain of the money arising by such sale, shall be repaid to the party distrained upon.

In what cases
scire facias to
issue.

XXXIV. And because such things as be recorded before the chancellor and the judges and justices who have record, and be inrolled in their rolls, process of plea ought not to be made by summons, attachment, view of land and other solemnities of the court, as hath been used to be done of bargains and covenants made out of court; Therefore, *Be it further enacted by the authority aforesaid*, That from henceforth those things which are found inrolled before those who have record, or contained in fines, whether they be recoveries or judgments had, or contracts, covenants, obligations, services or customs acknowledged, or other thing whatsoever inrolled, wherein the court, without offence of the law and custom, may execute their authority, shall have such force that the party, at any time within the year after the same are or shall be had, levied or acknowledged, shall have a writ of execution of the same; and when the fine, judgment, recovery or recognizance be levied, had or made, of a further time passed, the sheriff shall be commanded that he make known to the party of whom it is complained, that he or she be before the justices or court at a certain day, to shew if he or she have any thing to say why such matters inrolled or contained in the fine, ought not to have execution; and if he or she do not come at the day, or do come and can say nothing why execution ought not to be done, the sheriff shall be commanded to cause the thing inrolled or contained in the fine, to be executed.

Plaintiff shall
not be non-
sued after
verdict.

XXXV. *And be it further enacted by the authority aforesaid*, That where a verdict hath been or shall be found in assise, or in any other action whatsoever, and the parties have been or shall be adjourned upon difficulty in law upon the matter so found, the plaintiff shall not be non-sued, if the verdict pass against him or her.

C H A P. LXIX.

An ACT directing a Mode of Trial, and allowing of Divorces in Cases of Adultery.

Passed 30th March, 1787.

WHEREAS the laws at present in being within this state, respecting adultery, are very defective, and applications have, in consequence, been made to the legislature, praying their interposition: *And whereas* it is thought more advisable for the legislature to make some general provision in such cases, than to afford relief to individuals, upon their partial representations, without a just and constitutional trial of the facts:

I. *Be it therefore enacted by the People of the State of New-York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same, That it shall and may be lawful, in all cases of adultery that have already been committed, or may hereafter be committed, where the parties are inhabitants of this state, for the party injured to exhibit or present a petition or bill to the chancellor of this state for the time being, in chancery, setting forth the adultery of which he or she complains. Whereupon a subpoena, and other process shall issue, as in other causes in the said court, until the party complained of shall appear and answer the allegations of the said bill or petition, which answer shall be received without oath; and if the party complained of shall, by his or her answer, deny the fact or facts of adultery stated in the said bill or petition, the chancellor shall and may thereupon direct such proper issue or issues, as to him shall seem expedient for trial of the fact or facts of adultery stated in the said bill or petition, which issue or issues shall be tried, either by a special or common jury, before the judges of the supreme court, or some or one of them, at the bar of the said court, or at any circuit court within this state, as the chancellor for the time being, shall direct. But if the said party complained of shall not, in his or her said answer, deny the allegations of the said bill or petition, or if such proceedings shall be had in the same court of chancery, that the said bill or petition ought, according to the course of that court, to be taken pro confesso, then, and in either of the said cases, the chancellor shall nevertheless direct proof to be made before one of the masters of the said court, of the facts stated in the said bill or petition, who shall report the same proofs, and his opinion thereon, to the chancellor, at such time as shall be by the said court of chancery for that purpose appointed.*

II. *And be it further enacted by the authority aforesaid, That if by the verdict of a jury, upon trial of such issue or issues as aforesaid, it shall appear or be found that the said party complained against was guilty of adultery, or*

Mode of proceeding in cases of adultery.

if adultery be found or proved.

C H A P. V.

An ACT to prevent Abuses and Delays in Actions of Replevin.

Passed 6th February, 1788.

Beasts, goods
or chattels
wrongfully
detained, to
be replevied
by writ or
plaint.

Process there-
in.

Form of the
plaint.

Writs or
plaints in re-
plevin, may
be removed
by either party
into the
supreme court

All writs of
replevin shall
be returnable in
the supreme

I. BE it enacted by the People of the State of New-York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same, That if the beasts, or goods, or chattels of any person, at any time hereafter, be taken and wrongfully detained, the sheriff, by a writ of replevin to be issued out of the chancery, or upon complaint thereof to him to be made without writ, shall cause the same beasts, or goods, or chattels to be replevied, and delivered, without let or gainfaying of the person who took them, whether they were taken within liberties or without, and shall summon the person who took them, to appear, if the suit be by writ, at the return thereof; and if by plaint, at the next court of common pleas, to be held in his county, to answer the plaintiff of the taking and unjust detention of the same beasts, or goods or chattels. And if any defendant shall not appear according to such summons, then he or she shall be attached; and if such defendant shall not appear upon the return of the attachment, then he or she shall be distrained, from time to time, until he or she shall appear to answer the plaintiff: And further, That such plaint before the sheriff shall be in writing, and in the following form :

WESTCHESTER county, to wit : A. B. of Bedford, in the county of Westchester, yeoman, complains of C. D. of the manor of Pelham, in the county of Westchester, gentleman, of a plea of taking and unjustly detaining his beasts (or, his beasts, goods and chattels, or, his goods and chattels, or, his certain mare, or, his certain silver bowl,) and gives security to prosecute his said complaint, and to return the same beasts, if return thereof shall be adjudged.

Which plaint the sheriff shall return to the next court of common pleas to be held in and for his county, in the same manner as if it was a writ of replevin, returnable into the same court, and the like proceedings shall thereupon be had in the same court, as may or ought to be had upon a writ of replevin. And moreover, It shall be lawful for either party, in any writ or plaint in replevin, to be depending in any court of common pleas, at any time before any juror is sworn, or any judgment obtained, to cause the writ or plaint, and the proceedings thereon, to be removed into the supreme court, by writ of *certiorari* ; and such proceedings shall be thereupon in the supreme court, as if the suit had been originally commenced in the supreme court.

II. And be it further enacted by the authority aforesaid, That all writs of replevin shall henceforth be made returnable in the supreme court, or in the court of common

pleas, in and for the county where the beasts, or goods or chattels, for the taking whereof the writ shall be brought, were taken, and shall be in the form following:

THE PEOPLE, TO THE SHERIFF. *If A. B. of the city of New-York, merchant, shall give you security to prosecute his complaint, and to return his beasts (or, his beasts, goods, and chattels, or, his goods and chattels, or, his certain horse, or, his certain silver tankard) which C. D. of Goshen, in Orange county, gentleman, took and unjustly detain against gages and pledges, as he saith, if return thereof shall be adjudged; then cause the same beasts to be replevied, and delivered to the aforesaid A. B. without delay, and summon, by good summoners, the aforesaid C. D. that he be before our justices of our supreme court (or, our judges and assistant justices of our court of common pleas, to be held in and for your county) at (such a place) on (such a day) to answer the aforesaid A. B. of a plea of taking and unjustly detaining the beasts aforesaid.*

court, or
court of com-
mon pleas.

Form of the
writ.

III. *And be it further enacted by the authority aforesaid,* That if any person shall take the beasts, or goods, or chattels of another, and drive, and convey and put them into any house or place of strength, and the person from whom the same beasts, or goods or chattels shall be taken, sue for a replevin thereof, by writ or plaint, the sheriff shall solemnly demand deliverance thereof, at the house or place where the same are detained; and if neither the taker, nor any person on behalf of such taker, shall, upon demand, deliver the same, or if no person shall come upon such demand to deliver the same, the sheriff shall take the power of his county, and break open such house or place of strength, and make replevin according to the writ or plaint.

Sheriff may
take the power
of his county,
and break
open any
house, or
place of
strength, to
make replevin

IV. *And be it further enacted by the authority aforesaid,* That every sheriff, before he makes deliverance of any beasts, goods or chattels, by virtue of any writ or plaint in replevin, shall take of the plaintiff sufficient security to prosecute the suit, and to return the same beasts, goods or chattels, if return thereof shall be adjudged; and if any sheriff shall take security otherwise, or neglect to take such security, he shall answer for the price or value of the beasts, goods and chattels; and the person who distraineth, shall have his or her recovery, by writ that he shall restore to him or her so many beasts, goods or chattels.

Sheriff to take
security to
prosecute the
suit, or be ac-
countable for
the value of
the things de-
livered.

V. *And be it further enacted by the authority aforesaid,* That if the plaintiff, in any action or suit in replevin, shall make default, and a return of the beasts, or goods, or chattels, is awarded to the distrainer, the sheriff shall be commanded by a judicial writ, to make return of the beasts, or goods, or chattels, unto the distrainer; in which

If return of
goods be
awarded,
plaintiff may
have a writ
of second de-
liverance;

writ it shall be expressed, that the sheriff shall not deliver them without writ, making mention of the judgment, which cannot be without a writ issuing out of the same court in which the matter was moved; and if the plaintiff cometh unto them, and desireth replevin of the same beasts, goods and chattels, he or she shall have a judicial writ, that the sheriff, taking security for the suit, and also for the return of the same beasts, goods and chattels, or for the price or value of them, if return shall be awarded, shall deliver unto the plaintiff the beasts, goods and chattels before returned; and the distrainer shall be attached to come and be at a certain day, at the court in which the plea was moved, in the presence of the parties; and if the plaintiff make default again, or for another cause, return of the distress be awarded, being now twice replevied, the distress shall remain irrepleviable. But if a distress be taken of a new, and for a new cause, the process aforesaid shall be observed in the same new distresss.

But if return be again awarded, the distress to be irrepleviable.

On claim of property, if sheriff makes replevin before it is tried, he forfeits £. 100, besides being answerable for the trespass.

VI. *And whereas frequent abuses have been committed in the execution of writs of replevin, by sheriffs making deliverance, notwithstanding due notice and claim of property have been interposed by the defendant or possessor; For the more effectual prevention whereof, Be it further enacted by the authority aforesaid,* That if at any time hereafter, on a writ or plaint of replevin, the defendant in replevin, or possessor, shall claim property in the thing whereof deliverance is sought, and the sheriff, either by himself, his under sheriff, or bailiff, having due notice, shall nevertheless proceed to make deliverance, and dispossess such defendant thereof, before the claim of property shall be enquired into, or tried according to law; such sheriff, for every such offence, shall, besides being answerable to the defendant for the trespass, forfeit the sum of one hundred pounds, to be recovered by any person who shall sue for the same, in any court of record, by action of debt, bill, plaint or information; the one moiety thereof to the use of the person who shall sue for the same, and the other moiety thereof to the use of the people of this state.

Beasts distrained, not to be driven out of the county,

Not impounded in different places,

VII. *And be it further enacted by the authority aforesaid,* That no distress of beasts shall be driven out of the town, manor, district or precinct, where such distress is or shall be taken, except that it be to a poundvert, within the same county, not above three miles distant from the place where the said distress shall be taken; and that no beasts, or goods or chattels, distrained or taken by way of distress, for any cause whatsoever at one time, shall be impounded in several places, whereby the owner or owners of such distress, shall be constrained to sue several replevins for the delivery of the said distress, so taken at one time, upon pain that every person offending therein, shall

for every such offence, forfeit to the party grieved; ten pounds; and treble damages; to be recovered in any court of record, by action of debt, bill, plaint or information.

Under penalty of £10, and treble damages.

VIII. And be it further enacted by the authority aforesaid; That every sheriff shall, in every replevin of a distress for rent, take in his own name, from the plaintiff and two sureties, a bond in double the value of the beasts, or goods or chattels distrained (such value to be ascertained by the oath of one or more witnesses not interested, and which oath such sheriff is hereby authorised to administer) and conditioned for prosecuting the suit with effect, and without delay, and for returning the beasts, or goods and chattels, in case a return shall be awarded, before any deliverance be made of the distress; and the sheriff shall, at the request and costs of the defendant, avowant, or person making cognizance, assign such bond to the defendant, avowant, or person making cognizance, by endorsing the same, and attesting it under his hand, in the presence of two witnesses; and if the bond be forfeited the defendant, avowant, or person making cognizance, may bring an action thereupon, in his or her own name; and the court may, by rule, give such relief to the parties upon such bond, as shall be agreeable to justice; and such rule shall have the nature and effect of a defeazance to such bond,

In replevin of distress for rent, the sheriff to take a bond of plaintiff, with sureties, in double the value of the goods, to prosecute and make return, if awarded.

Such bond to be assigned to the defendant, who may bring an action thereon in his own name.

IX. And be it further enacted by the authority aforesaid; That wheresoever any lands, tenements or hereditaments, are or shall be held by any person or persons, by rents, customs or services, if the person of whom any such lands, tenements or hereditaments, are or shall be held, shall distress upon the same lands or tenements, for any such rents, customs or services, and replevin thereof be sued, the person of whom the same lands, tenements or hereditaments, are or shall be so holden, may avow, or his or her bailiff, or servant, make cognizance or justify for taking the said distress, upon the same lands, tenements or hereditaments, so holden as in lands or tenements within his or her fee, alledging in the said avowry, cognizance and justification, the same lands and tenements to be holden of him or her, without naming any person certain to be tenant of the same, and without making any avowry, cognizance or justification upon any certain person. And that the distrainer, or his or her bailiff or servant, may make avowry, cognizance or justification, in like manner and form, upon every writ of second deliverance.

An avowry may be made by the lord upon the land holden of him without naming his tenant.

And in like manner on writs of second deliverance.

X. And be it further enacted by the authority aforesaid; That the plaintiffs and defendants in all writs or plaints of replevin, or writs of second deliverance, and in every of them, shall and may have like pleas, and like aid-prayers in all such avowries, cognizances and justifications (pleas of disclaimer only excepted) as they might have had before the making of this act, and as though the said

Plaintiffs and defendants in replevin, or in writs of second deliverance, to have like pleas and aid-prayers as at common law.

And like join-
der in aid.

avowry, cognizance or justification, had been made after the due order of the common law; and that all such persons, as by the common law, may lawfully join to the plaintiffs or defendants in the said writs or plaints of replevin, or second deliverance, as well without process as by process, shall or may, from henceforth, join unto the said plaintiffs or defendants, as well without process as by process, and have like pleas, and like advantages in all things (pleas of disclaimer only excepted) as they might have done by the order of the common law, before the making of this act.

If plaintiff in
replevin is
nonfuit be-
fore issue
joined, the de-
fendant may
make avow-
ry, if distress
was for rent,
and have a
writ of enquiry.

XI. *And be it further enacted by the authority aforesaid,* That whensoever any plaintiff in replevin shall be nonfuit, before issue joined in any suit of replevin, by plaint or writ lawfully returned, removed or depending in any court of record, the defendant, if the distress was made for rent, making a suggestion in nature of an avowry or cognizance for such rent, to ascertain the court of the cause of distress, the court, upon his or her prayer, instead of awarding a return of the distress, shall award a writ to the sheriff of the county where the distress was taken, to enquire, by the oath of twelve good and lawful men of his bailiwick, touching the sum in arrear at the time of such distress taken, and the value of the beasts, or goods and chattels distrained; and thereupon fifteen days notice shall be given to the plaintiff, or his or her attorney, in court, of the setting of such enquiry; and thereupon the sheriff shall enquire of the truth of the matters contained in such writ, by the oath of twelve good and lawful men of his county; and upon the return of such inquisition, the defendant shall have judgment to recover against the plaintiff the arrearages of such rent, in case the beasts, goods and chattels distrained, shall amount unto that value; and in case they shall not amount to that value, then so much as the value of the said beasts, goods and chattels, so distrained, shall amount unto, together with his or her full costs of suit, and shall have execution thereupon for the same, by *capias ad satisfaciendum, fieri facias*, or otherwise, as the law shall require; and in case such plaintiff shall be nonfuit after avowry or cognizance made, and issue joined, or if the verdict shall be given against such plaintiff, then the jurors impanelled, or returned to enquire of such issue, shall, at the prayer of the defendant, enquire concerning the sum of the arrears, and the value of the beasts, or goods and chattels, distrained; and thereupon the avowant, or the person who makes cognizance, shall have judgment for such arrearages, or so much thereof as the beasts, goods and chattels distrained, amount unto, together with his or her full costs, and shall have like execution for the same as aforesaid. *And further,* That if judgment be given upon demurrer for the avowant, or

And judgment
thereupon:

And if plain-
tiff be nonfuit
after issue
joined, or a
verdict be
given against
him, the jury
to enquire of
the arrears,
and value of
the distress.

If upon de-
murrer, judg-
ment be give

the person who makes cognizance for any rent, the court, instead of awarding a return of the distress, shall, at the prayer of the defendant, award a writ to enquire of the value of such distress, and upon the return thereof, judgment shall be given for the avowant, or person who makes cognizance as aforesaid, for the arrears alleged to be behind in such avowry or cognizance, if the beasts, or goods and chattels so distrained, shall amount to that value; and in case they shall not amount to that value, then for so much as the said beasts, or goods and chattels so distrained, amount unto; together with his or her full costs of suit, and shall have like execution for the same as aforesaid. *Provided always*, That where the value of the beasts, goods and chattels distrained as aforesaid, shall not be found to be of the full value of the arrears distrained for, the party to whom such arrears were due, his or her executors or administrators, may, from time to time, distrain again for the residue of the said arrears.

In for defendant, writ of enquiry to be awarded.

If distress is not equal to the arrears, party interested may distrain for residue.

XII. *And be it further enacted and declared by the authority aforesaid*, That no replevin shall lie in any case of distress for any tax, assessment or fine, to be collected or levied in pursuance of any law of this state; and if any person or persons shall hereafter sue out or prosecute a replevin in any such case, he, she or they, shall forfeit the sum of fifty pounds, to be recovered, with costs of suit, in any court of record within this state, by action of debt, bill, plaint or information; the one moiety to any person who shall sue for the same, and the other moiety to the people of this state.

No replevin allowed in cases of distress for tax, assessment or fine.

[THIRTEENTH SECTION OBSOLETE.]

C H A P. VI.

An ACT to prevent forcible Entries and Detainers.

Passed 6th February, 1788.

BE it enacted by the People of the State of New-York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same, That no person or persons shall hereafter make any entry into any lands, tenements or other possessions, but in cases where entry is given by the law, and in such case, not with strong hand, nor with multitude of people, but only in peaceable and easy manner; and, if any person from henceforth do to the contrary, and therefore be duly convicted, he shall be punished by fine and imprisonment. *And further*, That at all times when such forcible entry shall be made, and complaint thereof cometh to the justices of the peace of the same county, or to any of them, the same justices or justice shall take sufficient power of the county, and go to the place where such force is made, and if they find any that hold such place forcibly, after such entry made, the same justices or jus-

All entries to be peaceable.

If forcible, justices to view & record the force, and punish the offenders.

All persons to
assist in arrest-
ing the offend-
ers.

tice shall record such force, and set and impose a fine, not exceeding five pounds, upon every of the said offenders, to be paid by them for their said offences, to the people of this state, and cause every of them so holding by force, to be taken and put into the next gaol of the same county, there to abide convict, by the record of the same justices or justice, until they shall have respectively paid such fine to the people of this state. *And further, That* all the people of the county, as well the sheriffs as others, shall be attendant upon the justices, to go and assist the same justices to arrest such offenders, upon pain of fine and imprisonment.

Justices to re-
move the
force,

And take in-
quisition,

And cause ref-
titution to be
made;

II. And to the end that the party aggrieved, where any person shall make any such entry by force, or shall enter in peaceable manner, and after hold by force, may have restitution; *Be it further enacted by the authority aforesaid, That* where any person doth make any forcible entry into any lands, tenements or other possessions, or therein hold forcible, after complaint thereof made within the same county where such entry is made, to the justices of the peace of the same county, or to any one of them, by the party grieved; the same justices or justice, so warned, within a convenient time, shall go to the place where such force is made, taking the power of the county with him or them, if need be, and remove such force, if any there be; and shall, at the costs of the party grieved, cause this act to be duly executed; and whether the persons making such entries be present, or departed before the coming of the same justices or justice, the same justices or justice, in some good town in the same county next to the tenements so entered, or in some other convenient place, according to their discretion, shall have, and either of them shall have authority and power to enquire, by the people of the same county, as well of them that make such forcible entries into lands or tenements, as of them which the same hold with force; and if it be found before any of them, that any doth contrary to this statute, then the said justices or justice shall cause the lands and tenements so entered or holden as aforesaid, to be resealed, and shall put the party so put out, in full possession of the same lands and tenements so entered or holden as aforesaid. And if any person, after such entry into lands or tenements holden with force, make a feoffment, or other discontinuance to any person, to have maintenance, or to take away and defraud the possessor of his recovery in any wise, if after, in assise or other action thereof to be taken or pursued, in any court of record, by due inquiry thereof to be taken, the same feoffments and discontinuances be duly proved to be made for maintenance as aforesaid; then such feoffments, or other discontinuances, so as before made, shall be void, frustrate, and holden for none.

III. *And be it further enacted by the authority aforesaid,* That when the said justices or justice make such enquiries as aforesaid, they or one of them shall make a warrant or precept, to be directed to the sheriff of the same county, commanding him, in the name of the people of the state of New-York, to cause to come before the same justices or justice, at a certain time and place, therein to be specified, not less than two days from the time of issuing thereof, twenty-four good and lawful men of the same county, duly qualified to serve as jurors in such county, on trials in the supreme court, to enquire of such entries; and shall, at the time of making such warrant or precept, cause a notice in writing, of the issuing thereof, and of the time and place of the return thereof, to be affixed up in some public and suitable place upon the lands or tenements so entered or holden, or delivered to the party against whom such complaint is made, if such party be on the premises. *And further,* That the sheriff shall return issues upon every one of the jurors, at the day of the return of the first precept, twenty shillings, and at every day after, the double. And if any person who shall be indicted upon this act, before such justices or justice, shall immediately traverse such indictment, then the same justices or justice shall make a warrant or precept, to be directed to the sheriff of the same county, commanding him, in the name of the people of the state of New-York, to cause to come before such justices or justice, at a certain day, not less than four, nor more than eight days from the time of issuing such precept, and at a certain place therein to be specified, twelve good and lawful men of the same county, who shall be such as are or shall be qualified to serve as jurors as aforesaid, to try the same traverse, and the sheriff shall return issues upon every of them in the manner aforesaid. And if any sheriff be slack, and make no execution duly of such precept to him directed, to make such enquiries, or try such traverse, he shall forfeit twenty pounds for every default, to the party grieved; to be recovered, with costs of suit, in any court of record in the same county where the offence shall be committed, by action of debt, bill, plaint or information.

To issue a precept for a jury.

And to notice the party thereof.

Sheriff to return issues.

Traverse of the force to be tried by a jury.

Forfeiture on delinquent sheriff.

IV. *And be it further enacted by the authority aforesaid,* That no restitution upon any indictment of forcible entry or holding with force, be made to any person or persons, if the person or persons so indicted, or his or their ancestors, or those whose estate they have in such lands and tenements, hath or have had the occupation, or hath or have been in quiet possession, by the space of three whole years together, next before the day of such indictment found, and his, her or their estate or estates therein not ended or determined, which the party indicted shall and

No restitution if defendant or his ancestors have been in possession three years.

may allege for stay of restitution, and restitution to stay until that be tried, if the party complaining will deny or traverse the same; and then the justices or justice, before whom such indictment shall be found, shall proceed to try the same, in the manner herein before directed.

On conviction, restitution to be awarded and defendant to pay costs and damages.

V. *And be it further enacted by the authority aforesaid,* That if the allegation or traverse, taken or made by the person or persons indicted, be tried against the person or persons so indicted, either before the same justices or justice, or before the justices of the supreme court, or either of them, in case the proceedings be removed into the supreme court, before such trial, then, and in every such case, restitution shall be awarded by the justices or justice before whom the same shall be tried, or by the supreme court, in the same manner as if no plea or traverse had been made or put in by such persons so indicted; and the person or persons so convicted, shall pay such costs and damages to the party complaining, as shall be assessed by the justices or justice before whom the same is tried, or by the supreme court, if the proceedings shall be removed into the supreme court before such trial as aforesaid; the same costs and damages to be recovered and levied in the same manner, as costs and damages upon judgments in other actions are recovered.

This act to extend to freeholders, tenants for years & guardians.

The party disseised or ejected may have assise or trespass inst the officers,

VI. *And be it further enacted by the authority aforesaid,* That this act shall extend as well to tenants for years and guardians, as to such as have estates of freehold.

VII. *And be it further enacted by the authority aforesaid,* That if any person be disseised or ejected, or put out of any lands or tenements in forcible manner, or put out peaceably, and after holden out with strong hand, or after such entry, any feoffment or discontinuance in any wise thereof be made to defraud and take away the right of the possessor, the party grieved in this behalf shall have assise of *novel disseisin*, or a writ of trespass against such offenders; and if the party aggrieved recover by assise, or by action of trespass, and it be found by verdict, or in any other manner by due course of law, that the party defendant entered with force into the lands and tenements, or thence, after his entry did hold with force, the plaintiff shall recover his treble damages, with costs of suit, against the defendant.

And recover treble damages & costs.

Officers to execute this act.

VIII. *And be it further enacted by the authority aforesaid,* That all mayors, recorders, justices of the peace and aldermen, and sheriffs of cities, shall have, in the same cities, the like power to remove such entries, and in the other articles aforesaid, arising within the same, as the justices of the peace and sheriffs have by this act, in the several counties of this state.

C H A P. VII.

An ACT to enable Grantees of Reversions to take Advantage of the Conditions to be performed by Lessees.

Passed 6th February, 1788.

L *BE* it enacted by the People of the State of New-York, *represented in Senate and Assembly, and it is hereby enacted by the authority of the same,* That as well all and every person and persons, and bodies politic and corporate, their heirs, successors and assigns, which have, or shall have any gift or grant of the people of the state of New-York; by any ways or means howsoever, of any manors, lands, tenements, rents or other hereditaments; or of any reversion or reversions of the same, which did belong or appertain to any other person or persons, and have or shall, by any ways or means, come to the people of the state of New-York; as also, all other persons being grantees, or assignees, to or by the people of the state of New-York; or to or by any other person or persons, and the heirs, executors, successors and assigns of every of them, shall and may have and enjoy like advantages against the lessees, their executors, administrators and assigns, by entry for the non-payment of the rent, or for doing of waste or other forfeiture: *And also,* Shall and may have and enjoy all and every such like and the same advantage, benefit and remedies, by action only, for not performing other conditions, covenants or agreements, contained and expressed in their leases, demises or grants, against all and every the said lessees and termers, and grantees, their executors, administrators and assigns, as the lessors and grantors themselves, or their heirs or successors ought, should or might have had and enjoyed, at any time or times, in like manner and form as if the reversion of such lands, tenements or hereditaments had remained and continued in the same lessors or grantors, or in their heirs or successors.

Grantees of reversions may take advantage of conditions.

II. And be it further enacted by the authority aforesaid, That all termers, lessees, and grantees of manors, lands, tenements, rents, or any other hereditaments, for term of years; or life or lives, their executors, administrators and assigns, shall and may have like action, advantage and remedy, against all and every person and persons, and bodies politic and corporate, their heirs, successors and assigns, which have or shall have any gift or grant of the people of the state of New-York, or of any other person or persons of the reversion of the same manors, lands, tenements, rents or hereditaments, so letten, or any parcel thereof, for any condition, covenant or agreement, contained or expressed in their lease or leases, as the same lessees or any of them might and should have had against

Lessees may have the like remedy against the grantees of the reversions as they might have had against their grantors.

their lessors and grantors, their heirs or successors, all benefits and advantages of recoveries in value, by reason of any warranty in deed or in law, by voucher or otherwise, only excepted.

C H A P. IX.

An ACT to redress Disorders by common Informers, and to prevent malicious Informations.

Passed 6th February, 1788.

Informers on
penal statutes,
how to sue.

Time of fil-
ling informa-
tion to be in-
dorsed.

Name of the
party and ti-
tle of the sta-
tute to be in-
dorsed on the
process;

Or clerk iss-
uing the same
to forfeit £.3.

In all infor-
mations, &c.
the offence to
be laid in the
proper coun-
ty.

I. BE it enacted by the People of the State of New-York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same, That every informer, upon any penal statute, made or to be made, shall exhibit or commence his suit in proper person, and pursue the same only by himself, or by his attorney in court, and that no person shall be admitted or received to pursue against any person or persons, upon any penal statute, but by action of debt, bill, plaint or information, and not otherwise, nor shall have nor use any deputy or deputies at all; and that upon every such information which shall be exhibited, a special note be made of the very day, month and year of the exhibiting thereof, into any office, or to any officer who lawfully may receive the same, without any manner of antedate thereof to be made, and that the same information shall be accounted and taken to be of record from that time forward, and not before; and that no process be sued out upon such information, until the information be exhibited in form aforesaid. *And further,* That upon every process to be sued out upon any such action, bill, plaint or information, to compel the appearance of any defendant, shall be endorsed, as well the name of the party who pursueth the same process, as also the title of the statute upon which the action or information, in that behalf had or made, is grounded; and that every clerk, making out or issuing process, contrary to the tenor and provision of this act, shall forfeit and lose three pounds for every such offence; the one half to the use of the people of this state of New-York, and the other half to the party against whom any such defective process shall be awarded; to be recovered, with costs, in any court having cognizance thereof, by action of debt, bill, plaint or information.

II. And be it further enacted by the authority aforesaid, That in all informations to be exhibited, and in all bills, plaints and declarations in any action or suit, to be commenced against any person or persons, either by or on behalf of the people of the state of New-York, or by any other, or on the behalf of the people of the state of New-

York; and any other, for or concerning any offence committed or to be committed against any penal statute, made or to be made; the offence shall be laid and alleged to have been committed in the county where such offence was in truth committed, and not elsewhere; and if the defendant to any such information, action or suit, pleadeth that he oweth nothing, or that he is not guilty, and the plaintiff or informer in such information, action or suit upon evidence to the jury that shall try such issue, shall not both prove the offence laid in the said information, action or suit, and that the same offence was committed in that county, then the defendant and defendants shall be found not guilty. *Provided always*, That this act, or any thing herein contained, shall not extend to the laying of alledging of any offence, in any declaration, bill, plaint or information, for or concerning any maintenance, champerty, buying of titles, embracery, or extortion, or for or concerning any matter of corrupt usury, or for or concerning any custom, duty or impost, upon any goods, wares or merchandize, imported or to be imported into this state; but that every such offence shall or may be laid in any county, at the pleasure of any such informers.

Or defendant to be acquitted;

What offences may be laid in any county.

III. *And be it further enacted by the authority aforesaid*, That if any information, suit or action, shall be brought or exhibited against any person or persons, for any offence committed or to be committed against the form of any penal law made or to be made, either by or on behalf of the people of the state of New-York, or by any other, or on the behalf of the people of the state of New-York, and any other, it shall be lawful for such defendants to plead the general issue, that they are not guilty, or that they owe nothing, and to give such special matter in evidence to the jury that shall try the same, as if pleaded, would have been a good and sufficient matter in law to have discharged such defendant or defendants, against the said information, suit or action; and the said matter shall be as available to him or them, to all intents and purposes, as if he or they had sufficiently pleaded, set forth or alleged the same matter in bar or discharge of such information, suit or action.

Defendant may plead the general issue, and give the special matter in evidence.

IV. *And be it further enacted by the authority aforesaid*, That the like process in any action, bill, plaint, information or suit, to be commenced, sued or prosecuted upon any penal statute, made or to be made, shall be had and awarded, to all intents and purposes, as in an action of trespass with force and arms at the common law.

What process in penal actions.

V. *And be it further enacted by the authority aforesaid*, That if any citizen of this state, or of any of the United States of America, shall be sued or informed against in the supreme court, or in the court of exchequer, upon any

Citizens may appear by attorney without bail.

penal law, made or to be made, where such person is bailable by law, or where by the leave or favour of the court such person may appear by attorney, then, in all and every such case, the person so impleaded or sued, shall and may, at the day and time contained in the first process, served for his or her appearance, appear by attorney of the same court where the process is returnable, to answer and defend the same, and shall not be urged to a personal appearance, or to put in bail for the answering of such suit.

When the trial may be at bar.

VI. *And be it further enacted by the authority aforesaid,* That no jury shall be compelled to appear in the supreme court, or court of exchequer, for the trial of any issue in any action, information or suit, upon any penal statute, for any offence committed above thirty miles from the place where the same court shall sit, except in case where the attorney-general for the time being, for some reasonable cause in that behalf to be shewed, shall require the same to be tried at the bar in either of the said courts, which request shall be noted on the back of the writ of *distress* thereupon awarded, to the end the sheriff, or his bailiff, may and shall signify the same to the jury that are in such case impanelled.

Recovery by covin no plea in an action sued with good faith.

VII. *And be it further enacted by the authority aforesaid,* That if any person or persons shall sue with good faith; any action popular, and the defendant or defendants in the same action, plead any manner of recovery in any action popular, in bar of the said action, or else that the same defendant or defendants plead, that he or they, before that time, barred any plaintiff or plaintiffs in any such action popular, that then the plaintiff or plaintiffs, in the action taken with good faith, may aver that the said recovery in the said action popular was had by covin, or else aver, that the said plaintiff or plaintiffs so barred, was or were barred in the said action popular, by covin; and then, if after such averment, the said collusion or covin so averred, be lawfully found, the plaintiff or plaintiffs in the action sued with good faith, shall recover, according to the nature of the action, and have execution upon the same, in like manner as if no such action or recovery had been before had. *And further,* That in every such action popular, wherein the defendant or defendants shall be lawfully condemned, or attainted of covin or collusion as aforesaid, every such defendant shall have imprisonment of two years, by process of *capias*, to be sued within the year after such judgment had, or at any time after, till the said defendant or defendants shall be had and imprisoned as aforesaid, and that as well at the suit of the people of the state of New-York, as of every other that will sue in that behalf, and such process shall and may be pursued to outlawry. *And moreover,* No release, of any

Defendant convicted of covin to be imprisoned two years.

common person made or to be made to any such defendant or defendants, whether before or after any action popular, or indictment of the same had or commenced, or made or pending the same action, shall be in any wise available or effectual to let, surcease or bar the said action, indictment, process or execution. *Provided always*, That no plaintiff or plaintiffs be, in any wise, received to aver any covin in an action popular, where the point of the same action, or else the covin or collusion, have been once tried, or lawfully found with the plaintiff or plaintiffs, or against them, by the verdict of twelve men, and not otherwise.

Release of any common person no bar.

Covin not to be averred where already tried by a jury.

VIII. *And be it further enacted by the authority aforesaid*, That no informer or plaintiff, in any action popular, shall or may compound or agree with any person or persons, who shall offend, or shall be surmised to have offended against any penal statute, made or to be made for such offence committed, or pretended to have been committed; but after answer made in court to the information or suit in that behalf exhibited or prosecuted, nor after answer, but by the order or consent of the court in which the same information or suit is or shall be depending. *And further*, That if any such informer or plaintiff as aforesaid, shall willingly delay his suit, or shall discontinue or become nonsuit in the same, or shall have the trial or matter passed against him therein, by verdict or judgment of law; that then, and in every such case, the same informer or plaintiff shall yield, satisfy and pay unto the party defendant, his costs, charges and damages, to be assigned by the court in which the same suit is or shall be attempted. For the recovery whereof, every such defendant shall, immediately upon the same costs, charges and damages assigned, have his execution for the same, to be awarded unto him out of the same court in which the same shall be so assigned as aforesaid, as in other cases of execution.

No informer or plaintiff to compound without the consent of the court;

Upon discontinuance, nonsuit or verdict, to pay costs.

IX. *And be it further enacted by the authority aforesaid*, That if any person or persons (except the clerks of the court only for making out of process otherwise than is above appointed) shall offend in suing out of process, making of composition, or other misdemeanor, contrary to the true intent and meaning of this act, or shall, by colour or pretence of process, or without process, upon colour or pretence of any matter of offence, against any penal law, make any composition or take any money, reward, or promise of reward, for himself or to the use of any other, without the order or consent of some court of record; that then, he or they so offending, being thereof lawfully convicted, shall forever be disabled to pursue, or be plaintiff or informer, in any suit or information upon any statute popular or penal, and shall also, for every such offence, forfeit and lose the

Penalty on informers for misconduct.

sum of forty pounds ; the one half thereof to the people of the state of New-York, and the other half to the party grieved thereby, to be recovered, with costs, in any court of record, by action of debt, bill, plaint or information ; and that justices of oyer and terminer, justices of gaol delivery, and justices of the peace, in their sessions, shall have full power and authority to hear and determine all offences to be committed or done, contrary to the true intent and meaning of this act.

This act not to apply to persons to whom any penalty is specially given.

X. *Provided always, and be it further enacted by the authority aforesaid,* That this act shall not extend to restrain any certain person, body politic or corporate, to whom or to whose use any forfeiture, penalty or suit, is or shall be specially limited or granted, by virtue of any statute, and not generally to any person who will sue, but that every such certain person, body politic or corporate, may, in such case, sue, inform and pursue, as he or they might have done, if this act had never been made.

Clerk of the supreme court not to receive any information for trespass or misdemeanor before recognizance to be delivered to him ;

XI. And to prevent malicious informations in the supreme court of judicature of this state, for trespasses, batteries and other misdemeanors ; *Be it further enacted by the authority aforesaid,* That the clerk of the supreme court for the time being, shall not, without express order to be given by the said court, receive or file any information, for any trespass, battery or other misdemeanor, or seal any process thereupon, before he shall have delivered to him a recognizance from the person or persons procuring such information or informations to be exhibited, to be entered into, to the person or persons against whom such information or informations is or are to be exhibited, with sufficient security, in the penalty of twenty pounds, that he, she or they will effectually prosecute such information or informations, and abide by and observe such orders as the said court shall direct (which recognizance any one of the judges of the said supreme court is empowered to take) ; and after the taking and receipt whereof, the clerk of the said court shall make an entry thereof upon record, and shall file a memorandum in some public place in his office, that all persons may resort thereunto without fee. And in case any person or persons, against whom any information or informations for the causes aforesaid, or any of them, shall be exhibited, shall appear thereunto, and plead to issue, and the prosecutor or prosecutors of such information or informations, shall not, at his and their own proper costs and charges, at or before the second court (in which the same might be tried) next after issue joined therein, procure the same to be tried ; or if upon such trial, a verdict pass for the defendant or defendants, or in case the said informer or informers procure a *nolle prosequi* to be entered, then, in any of the said cases, the

To make entry thereof upon record.

When informer to pay costs,

said supreme court is hereby authorized to award to the said defendant or defendants, his or their costs, unless the judge before whom such information or informations shall be tried, shall, at the trial of such information or informations, in open court, certify upon record, that there was a reasonable cause for exhibiting the same. And in case the said informer or informers shall not, within ten days next after the said costs shall be taxed, and demand made thereof, pay to the said defendant or defendants, the said costs, then the said defendant or defendants shall have the benefit of the said recognizance, to compel them thereunto.

Unless the judge certify that there was reasonable cause.

C H A P. X.

As ACT for the more effectual Discovery of the Death of Persons beyond Sea, or absenting themselves, upon whose Lives Estates do depend.

Passed 6th February, 1788.

WHEREAS divers persons have estates for one or more life or lives, or for one or more year or years, determinable upon one or more life or lives; and it hath often happened, that such person or persons, for whose life or lives such estates are held, have gone beyond sea, or so absented themselves for many years, that the lessors, reversioners, or persons in remainder, cannot find out whether such person or persons be alive or dead; Therefore,

1. *Be it enacted by the People of the State of New-York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same, That if such person or persons, for whose life or lives such estates have been, or shall be granted or held as aforesaid, shall remain beyond sea, or absent himself, herself or themselves in this state, or elsewhere, by the space of seven years together, and no sufficient and evident proof be made of the life or lives of such person or persons respectively, in any action commenced or to be commenced for the recovery of such tenements, by the lessors or reversioners, or other person or persons entitled to the same estate, upon the death of such person, or persons; in every such case, the person or persons, upon whose life or lives such estate depended, shall be accounted as naturally dead; and in every action brought for the recovery of the said tenements by the lessors or reversioners, or other person or persons entitled to the same, upon the death of such person or persons, and their heirs or assigns, the judges before whom such action shall be brought, shall direct the jury to give their verdict as if the person or persons so remaining beyond sea, or otherwise absenting himself, herself or themselves, were dead.*

Persons upon whose lives estates depend, being absent seven years, to be deemed dead.

sum of forty pounds ; the one half thereof to the people of the state of New-York, and the other half to the party, grieved thereby, to be recovered, with costs, in any court of record, by action of debt, bill, plaint or information ; and that justices of oyer and terminer, justices of gaol delivery, and justices of the peace, in their sessions, shall have full power and authority to hear and determine all offences to be committed or done, contrary to the true intent and meaning of this act.

This act not to apply to persons to whom any penalty is specially given.

X. *Provided always, and be it further enacted by the authority aforesaid,* That this act shall not extend to restrain any certain person, body politic or corporate, to whom or to whose use any forfeiture, penalty or suit, is or shall be specially limited or granted, by virtue of any statute, and not generally to any person who will sue, but that every such certain person, body politic or corporate, may, in such case, sue, inform and pursue, as he or they might have done, if this act had never been made.

Clerk of the supreme court not to receive any information for trespass or misdemeanor before recognizance to be delivered to him ;

XI. *And to prevent malicious informations in the supreme court of judicature of this state, for trespasses, batteries and other misdemeanors ; Be it further enacted by the authority aforesaid,* That the clerk of the supreme court for the time being, shall not, without express order to be given by the said court, receive or file any information, for any trespass, battery or other misdemeanor, or seal any process thereupon, before he shall have delivered to him a recognizance from the person or persons procuring such information or informations to be exhibited, to be entered into, to the person or persons against whom such information or informations is or are to be exhibited, with sufficient security, in the penalty of twenty pounds, that he, she or they will effectually prosecute such information or informations, and abide by and observe such orders as the said court shall direct (which recognizance any one of the judges of the said supreme court is empowered to take) ; and after the taking and receipt whereof, the clerk of the said court shall make an entry thereof upon record, and shall file a memorandum in some public place in his office, that all persons may resort thereunto without fee. And in case any person or persons, against whom any information or informations for the causes aforesaid, or any of them, shall be exhibited, shall appear thereunto, and plead to issue, and the prosecutor or prosecutors of such information or informations, shall not, at his and their own proper costs and charges, at or before the second court (in which the same might be tried) next after issue joined therein, procure the same to be tried ; or if upon such trial, a verdict pass for the defendant or defendants, or in case the said informer or informers procure a *nolle prosequi* to be entered, then, in any of the said cases, the

To make entry thereof upon record.

When informer to pay costs,

said supreme court is hereby authorized to award to the said defendant or defendants, his or their costs, unless the judge before whom such information or informations shall be tried, shall, at the trial of such information or informations, in open court, certify upon record, that there was a reasonable cause for exhibiting the same. And in case the said informer or informers shall not, within ten days next after the said costs shall be taxed, and demand made thereof, pay to the said defendant or defendants, the said costs, then the said defendant or defendants shall have the benefit of the said recognizance, to compel them thereunto.

Unless the judge certify that there was reasonable cause.

C H A P. X.

An ACT for the more effectual Discovery of the Death of Persons beyond Sea, or absenting themselves, upon whose Lives Estates do depend.

Passed 6th February, 1788.

WHEREAS divers persons have estates for one or more life or lives, or for one or more year or years, determinable upon one or more life or lives; and it hath often happened, that such person or persons, for whose life or lives such estates are held, have gone beyond sea, or so absented themselves for many years, that the lessors, reversioners, or persons in remainder, cannot find out whether such person or persons be alive or dead; Therefore,

1. *Be it enacted by the People of the State of New-York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same, That if such person or persons, for whose life or lives such estates have been, or shall be granted or held as aforesaid, shall remain beyond sea, or absent himself, herself or themselves in this state, or elsewhere, by the space of seven years together, and no sufficient and evident proof be made of the life or lives of such person or persons respectively, in any action commenced or to be commenced for the recovery of such tenements, by the lessors or reversioners, or other person or persons entitled to the same estate, upon the death of such person, or persons; in every such case, the person or persons, upon whose life or lives such estate depended, shall be accounted as naturally dead; and in every action brought for the recovery of the said tenements by the lessors or reversioners, or other person or persons entitled to the same, upon the death of such person or persons, and their heirs or assigns, the judges before whom such action shall be brought, shall direct the jury to give their verdict as if the person or persons so remaining beyond sea, or otherwise absenting himself, herself or themselves, were dead.*

Persons upon whose lives estates depend, being absent seven years, to be deemed dead.

Persons evicted may re-enter, on proof that such absent person is living.

And recover damages.

II. *Provided always, and be it further enacted by the authority aforesaid,* That if any person or persons, shall be evicted out of any lands or tenements, by virtue of this act, and afterwards, if the person or persons upon whose life or lives such estate or estates depend, shall return again from beyond sea, or shall on proof in any action to be brought for the recovery of the same, be made appear to be living, or to have been living at the time of the eviction, that then, and from thenceforth, the tenant or lessee who was ousted of the same, his, her or their executors, administrators or assigns, shall or may re-enter, re-possess, have, hold and enjoy the said lands or tenements, in his, her or their former estate, for and during the life or lives, or so long a term as the said person or persons upon whose life or lives the said estate or estates depend, shall be living; and also shall, upon an action or actions, to be brought by him, her or them, against the lessors, reversioners or tenants in possession, or other persons respectively, which since the time of such eviction received the profits of the said lands or tenements, recover for damages the full profits of the said lands or tenements, respectively, for and from the time that he, she or they were ousted of the said lands or tenements, and kept and held out of the same, by the said lessors, reversioners, tenants, or other persons who, after the said eviction, received the profits of the said lands or tenements, or any of them respectively, as well in the case when the said person or persons upon whose life or lives such estate or estates did depend, are or shall be dead at the time of bringing of the said action or actions, as if the said person or persons were then living.

Persons claiming estates in remainder, after the death of an infant, married woman, &c. on affidavit that he hath cause to believe that such infant, &c. is dead, may apply to the chancellor,

III. *And whereas* divers persons, as guardians and trustees for infants, and husbands in right of their wives, and other persons, having estates or interests determinable upon a life or lives, have continued to receive the rents and profits of such lands or tenements, after the determination of their said particular estates or interests: *And whereas* the proof of the death of the persons on whose lives such particular estates or interests depended, is very difficult, and several persons have been, and may be thereby defrauded; For remedy whereof, and for preventing such fraudulent practices in future, *Be it further enacted by the authority aforesaid,* That any person or persons who hath or have, or shall have any claim or demand in or to any remainder, reversion or expectancy in or to any estate, after the death of any person within age, married woman, or any other person or persons whatsoever, upon affidavit, made in the court of chancery in this state, by the person or persons so claiming such estates, of his, her or their title, and that he, she or they hath or have cause to believe that such infant, married woman, or other person or persons, is or are

dead, and that his, her or their death is concealed by such guardian, trustee, husband, or any other person or persons, shall and may once a year, if the person or persons aggrieved shall think fit, move the chancellor for the time being; to order, and he is hereby authorized and required to order such guardian, trustee, husband, or other person or persons concealing or suspected to conceal such person or persons; on whose life or lives such estate doth, shall or may depend, at such time and place as the said court shall direct on personal or other due service of such order, to produce and shew to such person or persons (not exceeding two) as shall, in such order, be named by the party or parties prosecuting such order such infant, married woman, or other person or persons aforesaid; and if such guardian, trustee, husband, or such other person or persons as aforesaid, shall refuse or neglect to produce or shew such infant, married woman, or such other person or persons; on whose life or lives any such estate doth or shall depend, according to the directions of the said order, that then the said court of chancery is hereby authorized and required to order such guardian, trustee, husband, or other person or persons, to produce such infant, married woman, or other person or persons so concealed, in the said court of chancery, or otherwise before commissioners to be appointed by the said court, at such time and place as the court shall direct; two of which commissioners shall be nominated by the party or parties prosecuting such order, to his, her or their costs and charges; and in case such guardian, trustee, husband, or other person or persons, shall refuse or neglect to produce such infant, married woman, or other person or persons so concealed, in the court of chancery, or before such commissioners, whereof return shall be made by such commissioners, and that return filed in the office of the register of the said court of chancery; then, in any or either of the said cases, the said infant, married woman, or such other person or persons so concealed, shall be taken to be dead; and it shall be lawful for any person or persons claiming any title or interest in reversion or remainder, or otherwise after the death of such infant, married woman, or other person or persons so concealed as aforesaid, to sue upon such lands, tenements and hereditaments, as such infant, married woman, or other person or persons so concealed were actually dead.

Who is to order such infant, &c. to be produced.

If such infant, &c. is not produced, such infant, &c. shall be taken to be dead,

And claimants may enter.

And be it further enacted by the authority aforesaid, that if it shall appear to the said court, by affidavit, that such infant, married woman, or other person or persons, whose life or lives, such estate is holden, is or are, or was or were, at some certain place or places, beyond the limits where out of this state, in the said affidavit to be sworn, it shall and may be lawful for the party or

On affidavit, that infant is beyond sea, or out of this state claimant may send person to view such infant, &c.

parties prosecuting such order as aforesaid, at his, her or their costs and charges, to send one or both the said persons appointed by the said order, to view such infant, married woman, or other person or persons, for whose life or lives any such estate is or shall be holden ; and in case such guardian, trustee, husband, or other person or persons, concealing or suspected to conceal such person or persons as aforesaid, on whose life or lives any such estate doth or shall depend, shall refuse or neglect to produce, or procure to be produced, to such person or persons appointed by the said order, a personal view of such infant, married woman, or other person or persons, for whose life any such estate is or shall be holden ; that then and in such case, the person or persons appointed by such order, are hereby required to make a true return of such refusal or neglect to the said court, which return shall be filed in the office of the register of the said court, and thereupon such infant, married woman, or other person or persons, for whose life or lives any such estate is or shall be holden, shall be taken to be dead ; and it shall and may be lawful for any person or persons claiming any right, title or interest in reversion, remainder or otherwise, after the death of such infant, married woman, or other person or persons, for whose life or lives any such estate is or shall be holden, to enter upon such lands, tenements and hereditaments, as if such infant, married woman or other person or persons, for whose life or lives any such estate is or shall be holden, were actually dead.

Persons evicted may re-enter, on proof that such absent person is living.

V. *Provided always, and be it further enacted by the authority aforesaid,* That if it shall afterwards appear, upon proof, in any action to be brought, that such infant, married woman or other person or persons, for whose life or lives any such estate is or shall be holden, were alive at the time of such order made, that then it shall be lawful for such infant, married woman, guardian, trustee, or other person or persons, having any estate or interest determinable upon such life or lives, to re-enter upon the said lands, tenements or hereditaments, and for such infant, married woman, or other person or persons, having any estate or interest determinable upon such life or lives, his, her or their executors, administrators or assigns, to maintain any action or actions against those who, since the said order, received the profits of such lands, tenements or hereditaments, or their executors or administrators, and therein to recover full damages for the profits of the same received, from the time that such infant, married woman, or other person or persons, having any estate or interest determinable upon such life or lives, were ousted of the possession of such lands, tenements or hereditaments.

And recover damages.

On proof that

VI. *Provided also, and be it further enacted by the au-*

thority aforesaid, That if any such guardian, trustee, husband or other person or persons, holding or having any estate or interest determinable upon the life or lives of any other person or persons, shall, by affidavit, or otherwise, to the satisfaction of the said court, make appear, that he, she or they, hath or have used his, her or their utmost endeavours to procure such infant, married woman, or other person or persons, on whose life or lives such estate or interest doth or shall depend, to appear in the said court of chancery, or elsewhere, according to the order of the said court in that behalf made, and that he, she or they cannot procure or compel such infant, married woman, or other person or persons, so to appear, and that such infant, married woman, or other person or persons, on whose life or lives such estate or interest doth or shall depend, is, are or were living at the time of such return made and filed as aforesaid; then it shall be lawful for such person or persons to continue in the possession of such estate, and receive the rents and profits thereof, for and during the infancy of such infant, and the life or lives of such married woman, or other person or persons, on whose life or lives such estate or interest doth or shall depend, as fully as he, she or they might have done if this act had not been made.

such infant, &c. is living and cannot be produced, guardian, &c. to continue in possession.

VII. *And be it further enacted by the authority aforesaid*, That every person, who, as guardian or trustee for an infant, and every husband seized in right of his wife only, and every other person having an estate determinable upon any life or lives, who, after the determination of such particular estates or interests, without the express consent of him, her or them, who are or shall be next and immediately entitled upon, and after the determination of such particular estates or interests, shall hold over and continue in possession of any messuages, lands, tenements or hereditaments, shall be, and are hereby adjudged to be trespassers; and that all and every person and persons, his, her and their executors and administrators, who are or shall be entitled to such messuages, lands, tenements or hereditaments, upon or after the determination of such particular estates or interests, shall and may recover in damages against every such person or persons for holding over as aforesaid, and against his, her or their executors or administrators, the full value of the profits received during such wrongful possession as aforesaid.

Guardians, &c. holding estates after determination of life of infant, &c. adjudged trespassers.

And persons entitled to recover damages.

or their costs therein expended, against such relator or relators ; such costs to be levied in manner aforesaid.

Time for making return and pleading.

VI. *And be it further enacted by the authority aforesaid,* That it shall and may be lawful to and for the said supreme court, to allow to such person or persons respectively, to whom any writ of mandamus shall be directed, or against whom any information, in the nature of a *quo warranto*, in any of the cases aforesaid, shall be sued or prosecuted, or to the person or persons who shall sue or prosecute the same, such convenient time respectively to make a return, plead, reply, rejoin or demur, as to the said supreme court shall seem just and reasonable ; any thing herein contained to the contrary thereof in any wise notwithstanding.

C H A P. XIV.

An ACT for ascertaining the Measure of Land.

Passed 7th February, 1788.

Measure of land ascertained.

BE it enacted by the People of the State of New-York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same, That an acre of land shall contain one hundred and sixty square perches or rods ; each perch or rod being in length, five yards and one half of one yard ; and each yard three feet ; and each foot twelve inches ; so that when an acre of land shall be sixteen rods in length, it shall be ten rods in breadth.

C H A P. XVI.

An ACT against buying and selling of Offices.

Passed 7th February, 1788.

FOR the avoiding of corruption in officers, and to the intent that persons worthy and meet to be advanced to places where justice is to be administered, or any service of trust executed, and no other, should hereafter be preferred to the same :

Any person selling an office, or deputation of an office, to lose such office ;

I. *Be it enacted by the People of the State of New-York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same,* That if any person or persons, at any time hereafter, bargain or sell any office or offices, or deputation of any office or offices, or any part or parcel of any of them, or receive, have or take any money, fee, reward, or any other profit, directly or indirectly, or take any promise, agreement, covenant, bond, or any assurance to receive or have any money, fee or reward, or other profit, directly or indirectly, for any office or offices, or for the deputation of any

office or offices, or any part of any of them, or to the intent that any person should have, exercise or enjoy any office of offices, or the deputation of any office or offices, or any part of any of them ; then, all and every such person and persons who shall so bargain or sell any such office or offices, deputation or deputations, or who shall take any money, fee, reward or profit, for any such office or offices, deputation or deputations of any such office or offices, or any part of any of them, or who shall take any promise, agreement, covenant, bond or assurance, for any money, fee, reward or profit to be given for any such office or offices, deputation or deputations, of any such office or offices, or any part of any of them, shall not only lose and forfeit all his and their right and estate which such person or persons shall then have of, in or to such office or offices, deputation or deputations, or any part of any of them, or of, in or to the gift or nomination of such office or offices, deputation or deputations, for the which office or offices, or for the deputation or deputations of which office or offices, or for any part of any of them, any such person or persons shall so make any such bargain or sale, or take or receive any sum of money, fee, reward or profit, or any promise, agreement, covenant, bond or assurance, to have or receive any money, fee, reward or profit ; but also, all and every such person or persons, who shall give or pay any sum of money, reward or fee, or shall make any promise, agreement, covenant, bond or assurance, for any such office or offices, or for the deputation or deputations of any such office or offices, or any part of any of them, shall immediately, by and upon the same fee, money or reward, given or paid, or upon any such promise, agreement, covenant, bond or assurance, had or made for any fee, sum of money, or reward, to be paid or given as aforesaid, be adjudged a disabled person in the law, to all intents and purposes, to have, exercise or enjoy the said office or offices, deputation or deputations, or any part of any of them, for the which such person or persons shall so give or pay any sum of money, fee or reward, or make any promise, agreement, covenant, bond, or other assurance, to give or pay any sum of money, fee or reward. *And further,* That all and every such bargains, sales, promises, agreements, covenants, bonds and assurances, as be before specified, shall be void to and against him and them, by whom any such bargain, sale, promise, agreement, covenant, bond or assurance, shall be had or made.

And the purchaser of such office or deputation, disabled to hold such office :

And such bargains to be void.

II. *Provided always, and be it further enacted by the authority aforesaid,* That if any person or persons do offend in any thing contrary to the tenor and effect of this statute, yet notwithstanding all judgments given, and all other act and acts executed or done by any such person or persons so offending, by authority or colour of the office or de-

But all judgments, acts, &c. of offenders, prior to their removal from office, to be good in law.

putation, which ought to be forfeited, or not occupied, or not enjoyed by the person so offending as aforesaid, after the said offence so by such person committed or done, and before such person so offending, for the same offence be removed from the exercise, administration and occupation of the said office or deputation, shall be and remain good and sufficient in law, to all intents, constructions and purposes, in such like manner and form as the same should or ought to have remained and been, if this statute had not been made.

C H A P. XIX.

An ACT for the Prevention and Punishment of Extortion.

Passed 7th February, 1788.

Any officer
taking unlaw-
ful fees to
pay double
damages,

And to be pun-
ished by fine
& imprison-
ment.

BE it enacted by the People of the State of New-York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same, That no judge, justice, sheriff, or other officer whatsoever, ministerial or judicial, shall receive or take any fee or reward to do his office, but such as is or shall be allowed by the laws of this state; and if any doth, he shall restore to the party grieved, double damages. And further, That if any judge, justice, sheriff or other officer aforesaid, hath received or taken, or shall receive or take, by colour of his office, any fee or reward whatsoever, not allowed by the laws of this state, for doing his office, and be thereof convicted, either at the suit of the party grieved, in any court of record, or at the suit of the people of this state, in the supreme court, or before justices of gaol delivery, or before justices assigned to hear and determine, or in any court of general sessions of the peace, he shall be punished by fine or imprisonment, or both according to the discretion of the court, in which such conviction shall be had.

C H A P. XXI.

An ACT making it Felony in such who shall levy any Fine, suffer any Recovery, or acknowledge any Deed, Recognizance, Bail or Judgment in the Name of another, not being priory and consenting thereto.

Passed 7th February, 1788.

Person ac-
knowledging
a fine, or, &c.
in the name
of, or person-
ating another
as bail, to be
adjudged
guilty of fel-
ony.

BE it enacted by the People of the State of New-York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same, That all and every person and persons, who shall acknowledge or procure to be acknowledged, any fine or fines, recovery or recoveries, deed or deeds, recognizance or recognizances, bail

or bails, judgment or judgments, in the name or names of any other person or persons not privy or consenting to the same, and all and every person and persons who shall, before any person or persons authorized to take bail or bails, represent or personate any other person or persons, whereby the person or persons, so represented or personated, may be liable to the payment of any sum or sums of money, for debt or damages, to be recovered in the same suit or action wherein the person or persons are represented or personated, as if he or they had really acknowledged and entered into the same bail or bails, being lawfully convicted or attainted thereof, shall be adjudged guilty of felony.

II. *Provided always, and be it further enacted by the authority aforesaid,* That this act shall not extend to any judgment or judgments acknowledged by any attorney or attorneys of record, for any other person or persons, against whom any such judgment or judgments shall be had or given.

Not to extend to attorneys of record acknowledging judgment.

C H A P. XXII.

An ACT to prevent stealing and avoiding Records.

Passed 7th February, 1788.

BE it enacted by the People of the State of New-York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same, That if any record or parcel of the same, writ, return, panel, process, or other proceeding in the court of chancery, supreme court, exchequer, or in any other court of record, or in the office of the secretary of this state, or in the office of the clerk of any city or county in this state, hath been or hereafter shall be stolen, or willingly taken away, withdrawn or avoided, by any clerk, or by any other person, by reason whereof any judgment shall be reversed, then every such stealer, taker-away, with-drawer or avoider, their procurers, counsellors and abettors, being convicted or attainted thereof, according to the due course of law, shall be adjudged guilty of felony.

Persons stealing records, to be adjudged guilty of felony.

II. *Provided always, and be it further enacted by the authority aforesaid,* That this act shall not extend to any amendment or entry made or to be made by any rule, order, judgment or decree of any court.

This act not to extend to amendments or entries made by order of court.

On conviction to be committed to bridewell or house of correction.

to any city or town; and all persons wandering abroad and lodging in taverns, beer-houses, out-houses, market-places, or barns, or in the open air, and not giving a good account of themselves, and all persons wandering abroad and begging, and all idle persons not having visible means of livelihood, and all common prostitutes, shall be deemed and adjudged disorderly persons; and it shall and may be lawful for any justice of the peace to commit such disorderly persons (being thereof convicted before him, by his own view, or by the confession of such offenders, respectively, or by the oath of one or more credible witness or witnesses) to the bridewell or house of correction, of such city or town, there to be kept at hard labour, for any time not exceeding sixty days, or until the next general sessions of the peace to be holden in and for the city or county in which such offence shall happen.

Offenders, unless the punishment be otherwise limited, to be committed until the next sessions of the peace:

May be discharged by two justices,

And sessions may discharge or continue them for six months

Sessions may adjudge them disorderly & detain them for six months at hard labor, and order them to be corrected.

II. *And whereas* doubts have arisen and hereafter may arise, where authority is given to any justice or justices of the peace to commit offenders to the bridewell or house of correction for offences cognizable before them out of the general sessions of the peace, how long offenders may be there detained, and in what manner treated, where the time and manner of their punishment is not by law expressly directed, limited or appointed; Therefore, *Be it further enacted by the authority aforesaid*, That where any offenders shall be committed as aforesaid by virtue of any law now in being, or hereafter to be made, other than in cases of petit larceny, and the time and manner of their punishment is not expressly limited, directed and appointed, the said justice or justices shall commit such offender to the bridewell or house of correction, there to be kept to hard labour until the next general sessions of the peace, or until discharged by a due course of law; and it shall and may be lawful for two justices (of whom the justice who committed such offender to be one) to discharge such offender before the said general sessions of the peace, if they shall see cause; and if he or she shall not be so discharged, the said general sessions of the peace may either discharge him or her, or continue him or her in custody for such time as they shall see fit, not exceeding six months.

III. *And be it further enacted by the authority aforesaid*, That where any offender against this act shall be committed, as aforesaid, to the bridewell or house of correction, there to remain until the next general sessions of the peace; and the justices at such sessions shall, on examination of the circumstances of the case, adjudge such person to be a disorderly person within the intent and meaning of this act, they may, if they think convenient, order such disorderly person to be detained and kept in the said bridewell or house of correction to hard labour, for any

further time not exceeding six months ; and during the time of such confinement, to be corrected by whipping, in such manner and at such times and places, as, according to the nature of such person's offence, they in their discretion shall think fit.

IV. *And be it further enacted by the authority aforesaid,* That where any person offending against this act, shall have been committed, as aforesaid, to the bridewell or house of correction, there to remain until the next general sessions of the peace, if upon the examination of the person so committed as aforesaid, the last legal place of settlement of such person cannot be found, the justice shall, at the said general sessions, order such persons to be detained and employed in the bridewell, or house of correction, until they can provide for themselves, or until the justices of the peace at their next general sessions of the peace, can place them out in some lawful calling, as servants, apprentices, mariners or otherwise ; which the said general sessions of the peace are hereby empowered to do, in such manner as they shall think fit.

Sessions may place them out as servants, &c.

V. *And be it further enacted by the authority aforesaid,* That the several gaols in the respective cities and counties in this state, in which no bridewell, or house of correction, is or shall be built, shall be used and considered as houses of correction for all or any of the purposes in and by this act directed, with respect to houses of correction and the government thereof, until there shall be such house or houses of correction built as aforesaid ; and the keepers of the respective gaols, for the time being, or such persons as they respectively shall appoint, shall be masters or keepers of such gaols as houses of correction, as aforesaid, and shall have the same authority, and be under the same regulations, as in this act are before given and provided, respecting houses of correction ; and all and every person and persons ordered to be sent to a house of correction, according to this act, shall be sent to and received in such gaols respectively, and there be kept, taken care of and governed, according to the directions of this act, until such house or houses of correction shall be provided as aforesaid.

Where gaols to be used as houses of correction.

VI. *And whereas* there are sometimes persons, who by lunacy or otherwise, are furiously mad, or are so far disordered in their senses that they may be dangerous to be permitted to go abroad ; *Therefore, Be it further enacted by the authority aforesaid,* That it shall and may be lawful for any two or more justices of the peace, where such lunatic or mad person shall be found, by warrant under their hands and seals, directed to the constables and overseers of the poor of the city or town, or some of them, to cause such person to be apprehended and kept safely locked up in some secure place within such

Two justices may order lunatics, or mad persons, to be confined.

city, or within the county in which such town shall lie, as such justices shall, under their hands and seals, direct and appoint ; and if such justices shall find it necessary, to be there chained, if the last legal place of settlement shall be in such city, or in any town within such county ; and if the last legal place of settlement of such person shall not be in such city or county, then such person shall be sent to the place of his or her last settlement, in the manner directed in and by the laws relating to the poor, and shall be locked up or chained, by warrant from two justices of the city or county to which such person shall be so sent in manner aforesaid ; and the reasonable charges of apprehending, maintaining, keeping and removing such person, shall be satisfied and paid by the overseers of the poor of the city or town in which such person shall be legally settled as aforesaid, in the manner in and by the said laws directed : *Provided always*, That this act, or any thing therein contained, shall not extend, or be construed to extend to restrain or abridge the power or authority of the chancellor of this state for the time being, touching or concerning such lunatics ; or to restrain or prevent any friend or relation of such lunatic, from taking them under their own care and protection.

This act not to restrain the power of the chancellor, nor preventing friends from taking care of them.

VII. *And whereas* it often happens that disorderly persons wander from the places of their legal settlement, and are in circumstances sufficient to pay for their passage or journey home ; Therefore, *Be it further enacted by the authority aforesaid*, That it shall be lawful for any justice or justices of the peace, before whom any such disorderly person shall be brought, to order such disorderly person to be searched, and his or her bundle to be inspected by a constable, or overseer of the poor of such city or town, in the presence of such justice ; and if it shall appear that any such disorderly person hath sufficient wherewithal to pay his or her passage or journey, either in the whole or in part, to the city or town to which he or she shall belong, then the said justice or justices shall order so much of the money so found, to be paid, or other effects found with and upon such disorderly person, to be sold, and employed for and towards the expence of taking up and passing such disorderly person to his or her last legal place of settlement ; returning the overplus (if any there be) after deducting the charges of such sale, to such disorderly person.

Disorderly persons to pay the expence of conveying them to the place where they belong.

C · H · A · P. XXXII.

An ACT concerning Amendments and Jeofails.

Passed 20th February, 1788.

L *BE* it enacted by the People of the State of New-York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same, That by the misprision of a clerk, in any place wheresoever it be, no record or process shall be annulled or discontinued by mistaking in writing one syllable or one letter too much or too little : But as soon as the thing is perceived, by challenge of the party, or in other manner, it shall be immediately amended in due form, without giving advantage to the party that challengeth the same, because of such misprision. And the justices or judges before whom such plea or record is made, or shall be depending, as well by adjournment as by way of error, or otherwise, shall have power and authority to amend such record and process, as well after judgment as before judgment given, in any such plea, record or process, as long as the same record and process is before them. *And further,* That the judges and justices of the courts and places, in which any record, process, declaration, count, plea, warrant of attorney, writ, panel or return, is or may be while the same remains before them, shall have power to examine such records, declarations, counts, pleas, warrants of attorney, writs, panels and returns, by them and their clerks, and to reform and amend (in affirmance of the judgments of such records and process) all that which to them, in their discretion, shall seem to be misprision of the clerks, in such record, process, declaration, count, plea, warrant of attorney, writ, panel or return, so that by such misprision of the clerk, no judgment shall be reversed nor annulled. And if any record, process, declaration, count, plea, warrant of attorney, writ, panel or return, be certified defective, otherwise than according to the writing which thereof remaineth in the offices, court or places, from whence they be certified, the parties, in affirmance of the judgments of such records and process, shall have advantage to alledge that the same writing is variant from the said certificate, and that being found and certified, the same variance shall be, by the said judges or justices, reformed and amended according to the first writing. *And moreover,* That the judges and justices before whom any misprision or default is or shall be found, in any record or process which now is, or hereafter shall be depending before them, or any of them, as well by way of error as otherwise, or in the returns of the same, made or to be made by sheriffs, coroners, or any other, by misprision of the clerks of any of the said courts, or by misprision of the sheriffs, under sheriffs, coroners, or their clerks or

Mistakes in
pleas, records
or process,
how & when
to be amended

As well after
judgment as
before.

Courts may
order mispri-
sons of clerks
to be amend-
ed.

Variance be-
tween a re-
cord and the
certificate
thereof to be
amended.

Courts may
order mispri-
sons of clerks,
sheriffs and
other officers,
to be amended

other officers, clerks, or other ministers whatsoever, in writing one letter or one syllable too much or too little, shall have power to amend such defaults and misprisions, according to their discretion; and by examination thereof, by the said judges and justices, to be taken where they shall think needful: *And also*, that all such amendments may be made as well after a judgment given upon verdict, confession, *nihil dicit*, or *non sum informatus*, as upon matter of law pleaded.

Judgment not
to be reversed
for rasures or
interlinea-
tions, &c.

II. *And be it further enacted by the authority aforesaid*, That for error assigned, or to be assigned, in any record, process, warrant of attorney, writ original or judicial, panel or return, for that in any places of the same there be rasures, or interlineations, or that there be any addition, subtraction or diminution of words, letters or titles, or parcel of letters found in any such record, process, warrant of attorney, writ, panel or return, no judgment or record shall be reversed or annulled.

Clerks not to
alter records
in any term
after judg-
ment.

III. *And be it further enacted by the authority aforesaid*, That the record and process of pleas, real and personal, and of assises and certifications, whercof judgment is given and inrolled, or things touching such plea, shall in no wise be amended nor impaired by new entering of the clerks, either by the record or things certified, in no term after that such judgment in such plea is given and inrolled.

Proceedings
to be in Eng-
lish,

IV. *And be it further enacted by the authority aforesaid*, That all pleas which shall be pleaded in courts whatsoever in this state, shall be pleaded, shewed, defended, answered, debated, judged, entered and inrolled in the English tongue; and that all writs, process and returns thereof, and all proceedings thereon, and all pleadings, rules, orders, indictments, informations, inquisitions, presentments, verdicts, prohibitions, certificates, and all patents, charters, pardons, commissions, records, judgments, recognizances, bonds, rolls, entries, fines and recoveries, and all proceedings relating thereunto, and all proceedings whatsoever, in any courts of justice in this state, shall be in the English tongue and language only, and shall be written or printed in a good strong legible hand and character, and in words at length, and not abbreviated, except such abbreviations as are now commonly used in the English language. But it shall and may be lawful to express numbers by figures, in like manner as hath been heretofore, or is now commonly used in the said courts respectively, and to express the proper and known names of writs or other process or technical words in the same language as hath been commonly used, so as the same be written or printed in a common legible hand or character.

Except names
of writs and
technical
words.

No person to
be prejudiced
by ancient

V. *And be it further enacted by the authority aforesaid*, That no person shall be prejudiced by the ancient terms

and forms of pleadings, so that the matter of the action be fully shewed in the writ, declaration and pleadings.

terms and forms.

After verdict, judgment not to be reversed for any mispleading, insufficient pleading, or joefail, &c.

Or for want of form.

Or for variance in form, or want of averments, insufficient suggestions, misnaming of jurors, &c.

VI. *And be it further enacted by the authority aforesaid,* That if any issue hath been or hereafter shall be tried, by the oath of twelve men or more, for the party plaintiff or demandant, or for the party tenant or defendant, bailiff in assise, vouchee, prayee-in-aid, or tenant by receipt, in any manner of action, suit, bill, plaint or demand, in any court of record, then the judges or justices by whom judgment thereof ought to be given, shall proceed and give judgment in the same, any mispleading, lack of colour, insufficient pleading, or joefail; any miscontinuance or discontinuance, or misconceiving of process, misjoining of the issue, lack of warrant of attorney of the party against whom the issue shall happen to be tried, or any other default or negligence of any of the parties, or of their counsellors or attornies, had or made to the contrary, notwithstanding. And the judgments thereof so to be had and given, shall stand in full strength and force, to all intents and purposes, according to the said verdict, without any reversal or undoing of the same by writ of error, or otherwise, in like form as though no such default or negligence had ever been had or committed. *And further,* That if any verdict of twelve men or more, hath been or shall be given in any action, suit, bill, plaint or demand, in any court of record, the judgment thereupon shall not be stayed or reversed, by reason of any default in form, or lack of form, touching variance from the register or other defaults in form, in any writ original or judicial, count, declaration, plaint, bill, suit or demand, or for want of any writ, original or judicial, or by reason of any imperfect or insufficient return of any sheriff or other officer, or for want of any warrant of attorney, or by reason of any manner of default in process upon or after any aid-prayer, or voucher; nor shall any such record or judgment, after verdict, be reversed for any of the defects or causes aforesaid. *And moreover,* That if any verdict of twelve men, or more, hath been or hereafter shall be given for the plaintiff or demandant, or for the defendant or tenant, bailiff in assise, vouchee, prayee-in-aid, or tenant by receipt, in any action, suit, bill, plaint or demand, in any court of record, the judgment thereupon shall not be stayed or reversed, by reason of any variance in form only, between the original writ or bill, and the declaration, plaint or demand; or for lack of any averment of any life or lives of any person or persons, so as, upon examination, the said person be proved to be in life; or by reason that the *venire facias*, *habeas corpora*, or *distringas*, is awarded to a wrong officer, upon any insufficient suggestion, or by reason that any of the jury which tried the said issue, is

misnamed, either in the christian name, surname, or addition, in any of the said writs, or in any return upon any of the said writs, so as, upon examination, it be proved to be the same man who was meant to be returned; or by reason that there is no return upon any of the said writs, so as a panel of the names of the jurors, be returned and annexed to the said writ or writs; or for that the sheriff's name, or other officer's name having the return thereof, is not set to the return of any such writ, so as, upon examination, it be proved, that the said writ was returned by the sheriff or under sheriff, or any such other officer; or by reason that the plaintiff in any action of ejectment, or in any personal action or suit (being an infant under the age of twenty-one years) did appear by attorney therein, and the verdict pass for him or her; and also, that if any verdict of twelve men or more, hath been or shall be given in any action, suit, bill, plaint or demand, in any court of record, the judgment thereupon shall not be stayed or reversed for default in form or lack of form, or by reason that there are no pledges, or but one pledge to prosecute, returned upon the original writ; or because the name of the sheriff is not returned upon such original writ, or for default of entering pledges upon any bill or declaration; or for default of alledging the bringing into court any bond, bill, indenture or other deed whatsoever, mentioned in the declaration or other pleading; or for default of alledging the bringing into court letters testamentary, or letters of administration, or by reason of the omission of the words, *with force and arms*, or, *against the peace*, or for or by reason of the mistaking of the christian name or surname of the plaintiff or defendant, demandant or tenant, sum or sums of money, day, month or year, by the clerk, in any bill, declaration or pleading, where the right name, surname, sum, day, month or year, in any writ, plaint, roll or record preceding, or in the same roll or record where the mistake is committed, is or are once truly and rightly alledged, and to which the party might have demurred and shewn the same for cause; nor for want of the averment or words, *and this he is ready to verify*, or, *and this he is ready to verify by the record*, or for not alledging, *as appears by the record*, or for that there is no right venue, so as the cause was tried by a jury of the proper county or place where the action is laid; nor shall any judgment after verdict, be reversed for want of entering, that the person against whom such judgment is given, *be in mercy*, or, *be taken*, or by reason that the words *be taken*, are entered for *be in mercy*, or the words *be in mercy*, are entered for *be taken*; nor for that in the judgment the words, *it is granted*, are entered for *it is considered*; nor

for that the increase of costs after a verdict in any action, or upon a nonsuit in replevin, are not entered to be at the request of the party for whom the judgment is given ; nor by reason that the costs in any judgment whatsoever, are not entered to be by the consent of the plaintiff ; but that all such omissions, variances, defects, and all other matters of like nature, not being against the right of the matter of the suit, nor whereby the issue or trial are altered shall be amended by the justices, or other judges of the courts where such judgments are or shall be given, or whereunto the record is or shall be removed by writ of error.

VII. *And be it further enacted by the authority aforesaid,* That where any demurrer hath been, or shall be joined and entered in any action or suit in any court of record in this state, the judges or justices shall proceed and give judgment, according as the very right of the cause and matter in law shall appear unto them, without regarding any imperfection, omission, defect or want of form, in any writ, return, plaint, declaration, or other pleading, process, or course of proceeding whatsoever, except those only which the party demurring shall specially and particularly set down and express, together with his demurrer, as causes of the same, notwithstanding that such imperfection, omission or defect might have heretofore been taken to be matter of substance, so as sufficient matter appear in the pleadings, upon which the court may give judgment according to the very right of the cause ; and therefore no advantage or exception shall be taken of or for an immaterial traverse, or of or for the default of entering pledges upon any bill or declaration, or of or for the default of alledging the bringing into court any bond, bill, indenture, or other deed whatsoever, mentioned in the declaration or other pleading, or of or for the default of alledging the bringing into court letters testamentary, or letters of administration, or of or for the omission of the words, *with force and arms, or, against the peace,* or either of them ; or of or for want of the averment or words, *and this he is ready to verify,* or, *and this he is ready to verify by the record ;* or of or for not alledging, *as appears by the record ;* but the court shall give judgment according to the very right of the cause as aforesaid, without regarding any such imperfections, omissions or defects, or any other matter of like nature, except the same shall be specially and particularly set down and shewn for cause of demurrer, and that no judgment shall be reversed by any writ of error for any such imperfection, omission, defect or want of form as is aforesaid, except such only as are before excepted. *And further,* That after demurrers joined, the court where the same are or shall be depending, shall and may,

On demurrer, court to give judgment as the right of the cause shall appear, without regarding want of form not specially shewn as cause of demurrer.

What shall be adjudged. form.

by virtue of this act, from time to time, amend all and every such imperfections, omissions, defects and want of form as are before mentioned, other than those only which the party demurring shall specially and particularly express and set down, together with his demurrer, as aforesaid.

This act not to extend to judgments on confession *nihil dicit*, or *non sum informatus*.

VIII. *And be it further enacted by the authority aforesaid,* That every thing herein before contained, shall extend to all judgments which have been or shall be entered upon confession, *nihil dicit*, or *non sum informatus*, in any court of record; and no such judgment shall be reversed, nor any judgment upon any writ of enquiry of damages executed thereon, be stayed or reversed, for or by reason of any imperfection, omission, defect, matter or thing whatsoever, which would have been aided and cured by this act, in case a verdict of twelve men had been given in the said action or suit, so as there be an original writ or bill duly filed according to law.

Variance in writs of error from the original record, to be amended.

Judgment after verdict not to be reversed for want of form in any bill or writ.

IX. *And be it further enacted by the authority aforesaid,* That all writs of error, wherein there shall be any variance from the original record, or other defect, may and shall be amended, and made agreeable to such record, by the respective courts where such writ or writs of error are or shall be made returnable. And that where any verdict hath been or shall be given in any action, suit, bill, plaint or demand, in any court of record, the judgment thereupon shall not be stayed or reversed for any defect or fault, either in form or substance, in any bill, writ original or judicial, or for any variance in such writs from the declaration or other proceedings.

This act to extend to suits for debts due to the state, and writs of mandamus and *quo warranto*.

X. *And be it further enacted by the authority aforesaid,* That this act shall extend to all suits in any court of record, for the recovery of any debt due to the people of this state, or for any debt, duty or revenue belonging to them; and also to all writs of mandamus and informations, in the nature of a *quo warranto*, and to the proceedings thereon.

But not to extend to criminal proceedings, nor popular actions, nor outlawries.

XI. *Provided always, and be it further enacted by the authority aforesaid,* That this act, or any thing therein contained, shall not extend to any writ, declaration or suit of appeal of felony or murder, nor to any indictment or presentment of felony, murder, treason, or other matter, nor to any process upon any of them; nor to any writ, bill, action or information, upon any popular or penal statute; nor to any outlawry or any process thereupon, or in order thereunto.

C H A P. XXXIV.

An ACT for preventing any Inconveniences that may happen by Privilege.

Passed 20th February, 1788.

I. **B**E it enacted by the People of the State of New-York, When members, &c. of the legislature may be sued. represented in Senate and Assembly, and it is hereby enacted by the authority of the same, That from and after the passing of this act, any person or persons, shall and may commence and prosecute any action or suit in any court of record in this state, against any senator or member of assembly for the time being, or against their or any of their servants, or any other person entitled to the privilege of either house of the legislature, at any time from and immediately after the prorogation or adjournment of the legislature, until a new legislature shall meet, or the same be re-assembled; and from and immediately after any adjournment of both houses of the legislature for above the space of fourteen days, until both houses shall meet or re-assemble; and that the said respective courts of record shall and may, after such prorogation or adjournment as aforesaid, proceed to give judgment, or to make final orders, decrees and sentences, and award execution thereupon, as such court may now lawfully do against other persons, liable to be arrested and imprisoned; any law, usage or custom to the contrary thereof notwithstanding. *Provided always*, That no member of the legislature, or his servant or servants, shall be liable to arrest, on any civil process, while coming to, or returning from the place where the legislature shall sit, to the place of such member's residence, but such time of coming or returning, shall not exceed fourteen days.

II. *And be it further enacted by the authority aforesaid*, That where any plaintiff or plaintiffs shall, by reason or occasion of any privilege of either house of the legislature, be stayed or prevented from prosecuting any suit by him, her or them commenced, such plaintiff or plaintiffs shall not be barred by any statute of limitation, or nonsuited, dismissed, nor his, her or their suit discontinued for want of prosecution of the suit, by him, her or them begun; but may, after the time aforesaid, be at liberty to proceed to judgment and execution thereupon, as aforesaid. Plaintiffs delayed by privilege, not to be barred by the statute of limitation.

III. *And whereas* it is just and reasonable, that persons employed in offices and places of public trust, should at all times be accountable for any misdemeanors therein, and the public justice of the state requireth a vigorous, prosecution of such offenders; Therefore, *Be it further enacted by the authority aforesaid*, That any action or suit shall and may be commenced, and prosecuted in any court of record in this state, against any officer or person intrusted or employed in the revenue of this state, or any Officers in public trust sued for any misdemeanor, not entitled to privilege, altho' members of the legislature.

part or branch thereof, or in any other office or place of public trust, for any forfeiture, misdemeanor or breach of trust, of, in or relating to such office or place of trust, or any penalty imposed by law to enforce the due execution thereof; and that no such action, suit, or any other process, proceeding, judgment or execution thereupon, although such officer or person shall be a member of the senate or assembly, shall be impeached, stayed or delayed, by or under colour or pretence of any privilege of either house of the legislature.

C H A P. XXXVI.

An ACT concerning Distresses, and for the better Security and more easy Recovery of Rents and Renewal of Leases, and to prevent Frauds by Tenants.

Passed 21st February, 1788.

Party taking
unreasonable
distress to be
fined and an-
swer the dam-
ages.

I. **B**E it enacted by the People of the State of New-York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same, That all distresses made or taken for any cause whatsoever, shall be reasonable and not too great; and whosoever shall take great and unreasonable distresses, shall be punished by fine for the excess of such distresses, and shall answer the damages to the party aggrieved.

No distress to
be taken
wrongfully,
or in the
highway, or
to be driven
out of the
county, on
pain of fine
and damages.

II. *And be it further enacted by the authority aforesaid,* That no person shall take any distress wrongfully or distrain in the highway or common street, or cause any distresses that he or she shall take, to be driven out of the county where it shall be taken; and every person who shall do so, of his or her own authority, and without judgment, shall be punished by fine, as for a thing done against the peace, and shall answer the damages to the party aggrieved.

Beasts of the
plough, sheep,
and imple-
ments of
trade, not to
be distrained
while there is
other distress.

III. *And be it further enacted by the authority aforesaid,* That no person shall be distrained for any cause whatsoever, by his or her beasts of the plough or sheep, or by the implements of his or her trade, but until other distress or chattels whereof the debt may be levied, or sufficient for the demand, can be found (except the distraining and impounding beasts found on the ground of any person damage feasant) according to the custom of this state.

Beasts dis-
trained to be
put in open
pound.

IV. *And be it further enacted by the authority aforesaid,* That when any beasts are distrained for any cause whatsoever, they shall be put in open pound, in the same county where they shall be taken; and they to whom the beasts do belong, may give them their feeding without disturbance, so long as they shall be impounded.

V. *And be it further enacted by the authority aforesaid,* That where any goods or chattels shall be distrained for any rent reserved and due upon any demise, lease, or contract whatsoever, and the tenant or owner of the goods so distrained, shall not, within five days next after such distress taken, and notice thereof (with the cause of such taking) left at the chief mansion house, or other most notorious place on the premises, charged with the rent distrained for, replevy the same, with sufficient security to be given to the sheriff according to law; that then in such case, after such distress and notice as aforesaid, and expiration of the said five days, the person distraining shall and may, with the sheriff or under sheriff of the county, or with the constable, or other officer of the town or place where such distress shall be taken (who are hereby required to be aiding and assisting therein) cause the goods and chattels so distrained, to be appraised by two sworn appraisers (whom such sheriff, under sheriff, constable or other officer as aforesaid, are hereby empowered to summon for that service, and to swear well and truly to appraise the same according to the best of their understanding) and after such appraisement, shall and may lawfully sell at public vendue, the goods and chattels so distrained, for the best price that can be gotten for the same (giving three days public notice) towards satisfaction of the rent for which the said goods and chattels shall be distrained, and of the charges of such distress, appraisement and sale; leaving the overplus (if any) in the hands of the said sheriff, under sheriff, constable or officer, for the owner's use.

Goods distrained for rent, may be appraised and sold.

VI. *And be it further enacted by the authority aforesaid,* That it shall be lawful for any person or persons having rent in arrear, and due upon any such demise, lease or contract as aforesaid, to seize and secure any sheaves or cocks of corn, or corn loose, or in the straw, or hay lying or being in any barn or granary, or upon any hovel, stack or rick, or elsewhere, upon any part of the land charged with such rent, and to lock up or detain the same, in the place where the same shall be found, for and in the nature of a distress, until the same shall be replevied, upon such security to be given as aforesaid; and in default of replevying the same as aforesaid, within the time aforesaid, to sell the same after the appraisement thereof, in manner as above directed. *And further,* It shall be lawful for such landlord or lessor, to take and seize as aforesaid, any cattle or stock of such tenant or tenants, feeding or depasturing upon any common appendant, or appurtenant, or any ways belonging to the premises demised or holden; and also to take and seize all sorts of corn and grass, roots or other produce growing or being thereon, as distresses for arrears of rent, and the same to cut, gather, make,

Corn or hay may be distrained for rent.

And cattle feeding on common belonging to the demised premises, and corn, grass, roots, and other produce thereon, may also be distrained for rent.

cure, carry, and lay up, in some convenient place on the premises; and for want thereof in some other place, to be procured by such landlord (due notice of such place being given to such tenant or lessee, or left at his place of abode) and within the time and in the manner herein before directed, to appraise, sell or dispose of the same.

Distresses may be impounded or secured & sold on the premises.

VII. *And be it further enacted by the authority aforesaid,* That it shall be lawful for any person, lawfully taking any distresses, to impound or otherwise secure the distresses so made of whatever nature or kind it may be, in such place, or on such part of the premises as shall be most convenient for the purpose, and to appraise, sell and dispose of the same upon the premises, in like manner as any person taking a distress for rent, may do off the premises, by virtue of this act; and it shall be lawful for any person or persons to come and go to and from such place or part of the said premises, in order to view, appraise and buy, and also to carry off and remove the same.

Treble damages and costs to be recovered on any pound breach, or rescous of the goods distrained.

VIII. *And be it further enacted by the authority aforesaid,* That upon any pound breach, or rescous of goods or chattels distrained for rent, the person or persons grieved thereby, shall, in a special action upon the case for the wrong thereby sustained, recover his and their treble damages and costs of suit, against the offender or offenders in any such rescous or pound breach, any or either of them, or against the owner of the goods distrained, in case the same be afterwards found to have come to his use or possession.

If goods are distrained and sold where no rent is due, the owner to recover double the value, with costs.

IX. *Provided always, and be it further enacted by the authority aforesaid,* That in case any such distress and sale as aforesaid, shall be made by virtue or colour of this present act, for rent pretended to be in arrear and due, where in truth no rent is in arrear or due to the person or persons distraining, or to him or them in whose name or names, or right, such distress shall be taken as aforesaid, that then the owner of such goods or chattels distrained and sold as aforesaid, his executors or administrators, shall and may, by action of trespass, or upon the case, to be brought against the person or persons so distraining any or either of them, his or their executors or administrators; recover double of the value of the goods or chattels so distrained and sold, together with full costs of suit.

Damages to be recovered for any unlawful act committed by the person distraining,

X. *And be it further enacted by the authority aforesaid,* That where any distress shall be made for any kind of rent justly due, and any irregularity or unlawful act shall be afterwards done by the party or parties distraining, or by his, her or their agent or agents, the distress itself shall not be therefore deemed to be unlawful, nor the party or parties making it, be deemed a trespasser or trespassers *ab initio*: But the party or parties aggrieved by such

unlawful act or irregularity, shall and may recover full satisfaction for the special damages he, she or they, shall have sustained thereby, and no more in an action of trespass, or on the case, at the election of the plaintiff or plaintiffs. *Provided always*, That where the plaintiff or plaintiffs shall recover in such action, he, she or they shall be paid his, her or their full costs of suit, and have all the like remedies for the same as in other cases of costs: But that no tenant or tenants, lessee or lessees, shall recover in any action for any such unlawful act or irregularity as aforesaid, if tender of amends hath been made, by the party or parties disclaiming, his, her or their agent or agents, before such action brought.

Unless tender of amends be made before action brought.

XI. *And be it further enacted by the authority aforesaid*, That in all actions of trespass, or upon the case, to be brought against any person or persons entitled to any rents or services of any kind, his, her or their bailiff, or receiver, or other person or persons, relating to any entry by virtue of this act, or otherwise, upon the premises, chargeable with such rents or services, or to any distress or seizure, sale or disposal of any goods or chattels thereupon, it shall and may be lawful to and for the defendant or defendants, in such actions, to plead the general issue, and give the special matter in evidence; any law or usage to the contrary notwithstanding. And in case the plaintiff or plaintiffs shall become nonsuit, discontinue his, her or their action or have judgment against him, her or them, the defendant or defendants shall recover double costs of suit.

Persons entitled to rents, being sued for any thing done by virtue of this act, may plead the general issue, & give the special matter in evidence; and, if judgment for him, have double costs.

XII. *And be it further enacted by the authority aforesaid*, That no goods or chattels whatsoever, in or upon the demised premises, shall be liable to be taken, by virtue of any execution, on any pretence whatsoever, unless the party at whose suit the said execution is sued out, shall, before the removal of such goods from off the said premises, by virtue of such execution, pay to the landlord of the said premises, or his bailiff, all and every sum or sums of money due for rent for the said premises, at the time of the taking such goods or chattels, by virtue of such execution; provided the said arrears of rent do not amount to more than one year's rent: And in case the said arrears shall exceed one year's rent, then the said party, at whose suit such execution is sued out, paying the said landlord, or his bailiff, one year's rent, may proceed to execute his judgment, as he might have done before the making of this act; and the sheriff or other officer, is hereby empowered and required to levy and pay to the plaintiff as well the money so paid for rent, as the execution money.

Goods not liable to execution, unless party pay arrears of rent to landlord.

Not exceeding one year's rent;

And sheriff to levy the debt and rent so paid.

XIII. *And be it further enacted by the authority aforesaid*, That in case any such lessee, for life or lives, term of

Goods carried off the premises, may be

seized within
30 days after
their removal

years, at will, or otherwise, shall convey or carry off, or from such demised premises, his or her goods or chattels, leaving the rent unpaid, it shall and may be lawful for such lessor or landlord, or any person or persons by him or her for that purpose lawfully empowered, within the space of thirty days next after such conveying away, or carrying off such goods or chattels as aforesaid, to take and seize such goods and chattels, wherever the same shall be found, as a distress for the said arrears of rent ; and the same to sell, or otherwise dispose of, in such manner as if the said goods and chattels had actually been distrained by such lessor or landlord, in and upon such premises, for such arrears of rent ; any law, custom or usage, to the contrary in any wise notwithstanding. *Provided nevertheless*, That nothing in this act contained, shall extend or be construed to extend to empower such lessor or landlord to take or seize any goods or chattels as a distress for arrears of rent, which shall be sold *bona fide*, and for a valuable consideration, before such seizure made to any person not privy to such fraud ; any thing herein contained to the contrary notwithstanding.

And sold if
distrained.

Not to extend
to goods *bona
fide* sold.

Tenants carry-
ing away
their goods,
leaving the
rent unpaid,
and persons
assisting there-
in, to forfeit
double the
value.

XIV. And to deter tenants from such conveying away their goods and chattels, leaving the rent unpaid, and others from wilfully aiding or assisting therein, or concealing the same ; *Be it further enacted by the authority aforesaid*, That if any such tenant or lessee shall remove and convey away his or her goods or chattels, as aforesaid, or if any person or persons shall wilfully and knowingly aid or assist any such tenant or lessee in such conveying away or carrying off any part of his or her goods or chattels, or in concealing the same, all and every person or persons so offending, shall forfeit and pay to the landlord or landlords, lessor or lessors, his, her or their heirs or assigns, from whose estate such goods and chattels were so carried off as aforesaid, double the value of the goods by him, her or them respectively carried off, or concealed, as aforesaid ; to be recovered by action of debt in any court of record.

Landlord with
a constable
may break
doors, and en-
ter suspected
places to take
goods, remo-
ved by tenants
to prevent dis-
tress.

XV. *And be it further enacted by the authority aforesaid*, That where any goods or chattels shall be conveyed or carried away, as aforesaid, by any tenant or tenants, lessee or lessees, his, her or their servant or servants, agent or agents, or other person or persons, aiding or assisting therein, shall be put, placed or kept in any house, barn, stable, out-house, yard, close or place, locked up, fastened or otherwise secured, so as to prevent such goods or chattels from being taken and seized as a distress for arrears of rent, it shall and may be lawful for the landlord or landlords, lessor or lessors, his, her or their heirs or assigns, or his, her or their steward, bailiff, receiver, or other person or persons empowered to take and seize, as a distress for rent, such goods and chattels (first calling to

his, her or their assistance, the constable or other peace officer of the town or place where the same shall be suspected to be concealed, who are hereby required to aid and assist therein, and in case of a dwelling-house, oath being also first made before some justice of the peace, of a reasonable ground to suspect that such goods or chattels are therein) in the day time to break open, and enter into such house, barn, stable, out-house, yard, close or place, and to take and seize such goods and chattels for the said arrears of rent, as he, she or they might have done by virtue of this act, if such goods and chattels had been put in any open field or place.

XVI. *And be it further enacted by the authority aforesaid,* That it shall be lawful for any person or persons having any rent in arrear or due upon a lease or demise for life or lives, to bring an action or actions of debt for such arrears of rent, in the same manner as they might have done in case such rent was due and reserved upon a lease for years.

ACTIONS of debt may be brought for rent on leases for life.

XVII. *And whereas, tenants pour autre vie, and lessees for years or at will, frequently hold over the tenements to them demised, after the determination of such lease : And whereas after the determination of such, or any other leases, no distress can, by law, be made for any arrears of rent that grew due on such respective leases before the determination thereof ; For remedy whereof, Be it further enacted by the authority aforesaid,* That it shall be lawful for any person or persons having any rent in arrear and due upon a lease for life or lives, or for years or at will, ended or determined, to distrain for such arrears after the determination of the said respective leases, in the same manner as they might have done if such lease or leases had not been ended or determined. *Provided,* That such distress be made within the space of six calendar months after the determination of such lease, and during the continuance of such landlord's title or interest, and during the possession of the tenant from whom such arrears became due.

Distress allowed for rent in arrear where lease for life is determined,

If made within six months, and during the landlord's title and tenant's possession.

XVIII. *And whereas, by the common law, the executors or administrators of tenants in fee simple, or for term of life, of rent service, rent charge, rent seck, and fee farms, have no remedy to recover such arrearages of the said rents or fee farms, as were due unto their testators or intestates in their lives, nor may the heirs of such testator, nor any person having the reversion of his or her estate, after his or her decease, distrain or have any lawful action to levy any such arrears of rents or fee farms ; For remedy whereof, Be it further enacted by the authority aforesaid,* That the executors or administrators of every such person and persons, unto whom any such rent or fee farm is or shall be due, and not paid at the

Executors or administrators of persons entitled to rents in fee, or for life,

may sue for
arrears of
such rents,

or distrain for
the same.

Husbands in-
dicted to such
rents in right
of their wives
may sue or
distrain for
the arrears
thereof after
the death of
their wives.

Persons inti-
tled to rents
for the life of
others, may
sue or distrain
for the arrears
thereof, after
the death of
such other
person.

time of his, her or their death, shall and may have an action of debt for all such arrearsages, against the tenant or tenants who ought to have paid the said rent or fee farms so being behind in the life of the testator or intestate, or against the executors or administrators of the said tenant or tenants: *And further*, That it shall be lawful for every such executor and administrator of any such person or persons, unto whom such rent or fee farm is or shall be due, and not paid at the time of his, her or their death, as aforesaid, to distrain for the arrearsages of all such rents and fee farms, upon the lands, tenements and hereditaments, which were, are or shall be charged with the payment of such rents or fee farms, and chargeable to the distress of the testator or intestate, so long as the lands, tenements or hereditaments continue, remain and be in the seisin or possession of the said tenant in demesne, who ought immediately to have paid the said rent or fee farm so being behind, to the said testator or intestate, in his or her life time, or in the seisin or possession of any other person or persons claiming the said lands, tenements and hereditaments, only by or from the said tenant, by purchase, gift or descent, in like manner and form as their testator or intestate might or ought to have done in his or her life time. And the said executors or administrators shall, for the same distress, lawfully make avowry upon their matter aforesaid, and make appraisement and sale of such distress in the manner aforesaid.

XIX. And be it further enacted by the authority aforesaid, That if any man who now hath, or shall hereafter have, in the right of his wife, any estate in fee simple, or for term of life, of or in any rents or fee farms, and the same rents or fee farms now be, or hereafter shall be due, behind and unpaid, in the said wife's life time; then the said husband, after the death of his said wife, his executors or administrators, shall have an action of debt for the said arrearsages, against the tenant of the demesne, who ought to have paid the same, his or her executors and administrators: *And further*, That the said husband, after the death of his said wife, may distrain for the said arrearsages, in like manner and form as he might have done, if his wife had been then living, and make avowry upon his matter as aforesaid, and make appraisement and sale of such distress in the manner aforesaid.

XX. And be it further enacted by the authority aforesaid, That if any person who now hath, or hereafter shall have any rents or fee farms, for term of life or lives, of any other person or persons, and the said rent or fee farm now be, or hereafter shall be due, and behind and unpaid, in the life of such person or persons, for whose life or lives the estate of the said rent or fee farm did depend

or continue, and after the said person or persons do die, then he or she to whom the said rent or fee farm was due in form aforesaid, his or her executors or administrators, shall and may have an action of debt against the tenant in demise, who ought to have paid the same when it was first due, his or her executors or administrators; and also may distrain for the same arrearages, upon the lands and tenements out of which the said rents or fee farms were issuing and payable, in such like manner and form as he or she ought or might have done, if the person or persons by whose death the aforesaid estate in the said rents and fee farms determined and expired, were in full life; and the avowry for the taking of the same distress to make in manner and form aforesaid, and make appraisement and sale of such distress in manner aforesaid.

XXI. *And be it further enacted by the authority aforesaid,* That in case any tenant or tenants, for any term of life, lives or years, or other person or persons who are, or shall come into possession of any lands, tenements or hereditaments, by, from, or under, or by collusion with, such tenant or tenants, shall wilfully hold over any lands, tenements or hereditaments, after the determination of such term or terms, and after demand made and notice in writing given for delivering the possession thereof, by his or their landlord or lessor, or the person or persons to whom the remainder or reversion of such lands, tenements or hereditaments shall belong, his or their agent or agents thereunto lawfully authorised; then and in such case, such person or persons so holding over, shall, for and during the time he, she or they shall so hold over or keep the person or persons entitled out of possession of the said lands, tenements or hereditaments, as aforesaid, pay to the person or persons so kept out of possession, his, her or their executors, administrators or assigns, at the rate of double the yearly value of the lands, tenements or hereditaments so detained, for so long time as the same are detained; to be recovered in any court of record in this state, by action of debt, whereunto the defendant or defendants shall be obliged to give special bail; and against the recovering of which said penalty there shall be no relief in equity.

Tenants, or other persons holding over, to pay double the yearly value of the lands.

XXII. *And be it further enacted by the authority aforesaid,* That in case any tenant or tenants shall give notice of his, her or their intention to quit the premises, by him, her or them holden, at a time mentioned in such notice, and shall not accordingly deliver up the possession thereof, at the time in such notice contained, that then the said tenant or tenants, his, her or their executors or administrators, shall, from thenceforward, pay to the landlord or lessor, his or her heirs or assigns, double the rent or sum which he, she or they should otherwise have paid; to be

Tenants giving notice of their intention to quit the premises, and refusing to deliver up the possession according to such notice, to pay double rent.

levied, sued for, and recovered at the same times, and in the same manner as the single rent or sum, before the giving such notice, could be levied, sued for or recovered ; and such double rent or sum shall be continued to be paid during all the time such tenant or tenants shall continue in possession, as aforesaid.

Where one half year's rent is in arrear, the lessor or having the right to re-enter, may recover by ejectment :

Manner of proceeding in such cases.

XXIII. *And whereas* great inconveniences may happen to lessors and landlords, in cases of re-entry for non-payment of rent, by reason of the many niceties that attend re-entries, at common law ; and forasmuch as when a legal re-entry is made, the landlord or lessor must be at the expence, charge and delay of recovering in ejectment, before he can obtain the actual possession of the demised premises ; For remedy whereof, *Be it further enacted by the authority aforesaid*, That in all cases between landlord and tenant, as often as it shall happen that one half year's rent shall be in arrear, and the landlord or lessor, to whom the same is due, hath right, by law, to re-enter for the non-payment thereof, such landlord or lessor shall and may, without any formal demand or re-entry, serve a declaration in ejectment for the recovery of the demised premises ; or in case the same cannot be legally served, or no tenant be in actual possession of the premises, then affix the same upon the door of any demised messuage ; or in case such ejectment shall not be for the recovery of any messuage, then upon some notorious place of the lands, tenements or hereditaments, comprised in such declaration in ejectment ; and such affixing shall be deemed legal service thereof ; which service, or affixing such declaration in ejectment, shall stand in the place, and stead of a demand and re-entry ; and in case of judgment against the casual ejector, or nonsuit for not confessing lease, entry and ouster, it shall be made appear to the court where the said suit is depending, by affidavit, or be proved upon the trial, in case the defendant appears, that half a year's rent was due before the said declaration was served, and that no sufficient distress was to be found on the demised premises, countervailing the arrears then due, and that the lessor or lessors in ejectment, had power to re-enter ; then, and in every such case, the lessor or lessors in ejectment, shall have judgment and execution, in the same manner as if the rent in arrear had been legally demanded, and re-entry made ; and in case the lessee or lessees, his, her or their assignee or assignees, or other person or persons claiming or deriving title under the said lease, shall suffer judgment on such ejectment, and execution to be executed thereon, without paying the rent and arrears, together with full costs, and without filing any bill or bills for relief, in equity, within six calendar months after such execution executed ; then, and in such case, the said lessee or lessees, his, her or their assignee or assignees,

and all other persons claiming and deriving title under the said lease, shall be barred and foreclosed from all relief or remedy in law or equity, other than by writ of error, for reversal of such judgment, in case the same shall be erroneous; and the said landlord or lessor shall, from thenceforth, hold the same demised premises, discharged from such lease or contract; and if on such ejectment, a verdict shall pass for the defendant or defendants, or the plaintiff or plaintiffs shall be nonsuited therein, except for the not confessing lease, entry and ouster, then, and in every such case, such defendant or defendants shall have and recover his, her and their full costs. *Provided always*, That nothing herein contained shall extend to bar the right of any mortgagee or mortgagees, of such lease or any part thereof, who shall not be in possession, so as such mortgagee or mortgagees shall and do, within six calendar months after such judgment obtained and execution executed, pay all rent in arrear, and all costs and damages sustained, by such lessor or person or persons entitled to the remainder or reversion, as aforesaid, and perform all the covenants and agreements, which on the part and behalf of the first lessee or lessees, are and ought to be performed.

Not to bar the right of any mortgagee who is not in possession, they paying the arrears, with costs, in six months.

XXIV. *And be it further enacted by the authority aforesaid*, That in case the said lessee or lessees, his, her or their assignee or assignees, or other person or persons claiming any right, title or interest, in law or equity, of, in or to the said lease, shall, within the time aforesaid, file one or more bill or bills for relief, in any court of equity, such person or persons shall not have or continue any injunction against the proceedings at law on such ejectment, unless he, she or they do, or shall, within forty days next after a full and perfect answer shall be filed, by the lessor or lessors of the plaintiff in such ejectment, bring into court and lodge with the proper officer, such sum and sums of money, as the lessor or lessors of the plaintiff in the said ejectment, shall, in his, her or their answer, swear to be due, and in arrear, over and above all just allowances; and also the costs taxed in the said suit, there to remain until the hearing of the cause, or to be paid out to the lessor or landlord, on good security, subject to the decree of the court; and in case such bill or bills shall be filed within the time aforesaid, and after the execution is executed, the lessor or lessors of the plaintiff, shall be accountable only for so much and no more, as he, she or they shall, really and *bona fide*, without fraud, deceit or wilful neglect, make of the demised premises, from the time of his, her or their entering into the actual possession thereof; and if what shall be so made by the lessor or lessors of the plaintiff, happen to be less than the rent reserved on the said lease, then the said lessee or lessees, his, her or their assignee or assignees, before he, she or they shall be restored

No injunction to issue to stop proceedings at law, unless the lessee brings into court the rent due, and costs.

Lessor accountable only for actual profits.

to the possession or possessions, shall pay such lessor or lessors, or landlord or landlords, what the money, so by them made, fell short of the reserved rent, for the time such lessor or lessors of the plaintiff, or landlord or landlords, held the said lands.

Proceedings in ejectment to cease, on tenants paying the rent and costs.

Tenants relieved in equity to hold lands without a new lease.

New leases good & valid without surrender of under leases.

If tenant for life dies before the day on which the

XXV. *Provided always, and be it further enacted by the authority aforesaid,* That if the tenant or tenants, his, her or their assignee or assignees, shall, at any time before the trial in such ejectment, pay, or tender to the lessor or landlord, his executors or administrators, or his, her or their attorney, in that cause, or pay into the court where the same cause is depending, all the rent and arrears, together with the costs, then, and in such case, all further proceedings on the said ejectment, shall cease and be discontinued; and if such lessee or lessees, his, her or their executors, administrators or assigns, shall, upon such bill, filed as aforesaid, be relieved in equity, he, she or they shall have, hold and enjoy the demised lands, according to the lease thereof made, without any new lease to be thereof made to him, her or them.

XXVI. And for making the renewal of leases more easy for the future. *Be it further enacted by the authority aforesaid,* That in case any lease shall be duly surrendered, in order to be renewed, and a new lease made and executed by the chief landlord or landlords, the same new lease shall, without a surrender of all or any the under-leases, be as good and valid, to all intents and purposes, as if all the under-leases derived thereout, had been likewise surrendered at or before the taking of such new lease; and all and every person or persons, in whom any estate for life or lives, or for years, shall from time to time, be vested by virtue of such new lease, and his, her and their executors and administrators, shall be entitled to the rents, covenants and duties, and have like remedy for recovery thereof; and the under-lessees shall hold and enjoy the demised premises respectively, as if the original leases, out of which the respective under-leases are derived, had been still kept on foot and continued; and the chief landlord or landlords shall have and be entitled to such and the same remedy, by distress or entry, in and upon the demised premises, for the rents and duties reserved by such new lease, so far as the same exceed not the rents and duties reserved in the lease out of which such under-lease was derived, as he, she or they would have had, in case such former lease had been still continued; or as he, she or they would have had, in case the respective under-leases had been renewed under such new principal lease; any law, custom or usage to the contrary hereof notwithstanding.

XXVII. *And be it further enacted by the authority aforesaid,* That where any tenant for life shall happen to die before, or on the day on which any rent was reserved or

made payable upon any demise or lease of any lands, tenements or hereditaments, which determined on the death of such tenant for life, that the executors or administrators of such tenant for life, shall and may, in an action on the case, recover of and from such under-tenant or under-tenants of such lands, tenements or hereditaments, if such tenant for life die on the day on which the same was made payable, the whole, or if before such day, then a proportion of such rent, according to the time such tenant for life lived of the last year, or quarter of a year, or other time in which the said rent was growing due as aforesaid, making all just allowances, or a proportionable part thereof, respectively.

rent becomes due, executors to recover a proportionable part.

XXVIII. *And whereas* the possession of estates in lands, tenements and hereditaments is rendered very precarious, by the frequent and fraudulent practice of tenants, in attorning to strangers who claim title to the estates, of their respective landlord or landlords, lessor or lessors, who by that means are turned out of possession of their respective estates, and put to the difficulty and expence of recovering the possession thereof, by actions or suits at law; For remedy whereof, *Be it further enacted by the authority aforesaid*, That all and every such attornment or attornments of any tenant or tenants, of any messuages, lands, tenements or hereditaments, shall be absolutely null and void, to all intents and purposes whatsoever, and the possession of their respective landlord or landlords, lessor or lessors, shall not be deemed or construed to be in any wise changed, altered or affected, by any such attornment or attornments. *Provided always*, That nothing herein contained, shall extend to vacate or affect any attornment made pursuant to, and in consequence of some judgment at law, or decree, or order of a court of equity, or made with the privity and consent of the landlord or landlords, lessor or lessors, or to any mortgagee, after the mortgage is become forfeited.

Attornments of tenants to strangers, void.

Unless made pursuant to judgment, or order of court, or with consent of landlord.

XXIX. *And be it further enacted by the authority aforesaid*, That every tenant to whom any declaration in ejectment shall be delivered, for any lands, tenements or hereditaments, shall forthwith give notice thereof to his or her landlord or landlords, or his, her or their bailiff or receiver, under penalty of forfeiting the value of three years improved or rack rent of the premises so demised, or holden in the possession of such tenant, to the person of whom he or she holds, to be recovered by action of debt to be brought in any court of record within this state.

Penalty on tenants not giving notice to their landlords of declarations in ejectment delivered to them.

XXX. *And be it further enacted by the authority aforesaid*, That it shall be lawful for the court where such ejectment shall be brought, to suffer the landlord or landlords, to make him, her or themselves, defendant or defendants, by joining with the tenant or tenants, to whom such de-

Landlords to be admitted defendants, by joining with their tenants.

claration in ejectment shall be delivered, in case he or they shall appear ; but in case such tenant or tenants shall refuse or neglect to appear, judgment shall be signed against the casual ejector, for want of such appearance ; but if the landlord or landlords of any part of the lands, tenements or hereditaments, for which such ejectment was brought, shall desire to appear by himself, herself or themselves, and consent to enter into the like rule, that, by the course of the court, the tenant in possession, in case he or she had appeared, ought to have done ; then the court, where such ejectment shall be brought, shall and may permit such landlord or landlords so to do, and order a stay of execution upon such judgment against the casual ejector, until they shall make further order therein.

Where demises are not by deed, landlords may recover reasonable satisfaction for their lands.

XXXI. And to obviate some difficulties that many times occur in the recovery of rents, where the demises are not by deed ; *Be it further enacted by the authority aforesaid,* That it shall be lawful to and for the landlord or landlords, his, her or their heirs or assigns, where the agreement is not by deed, to recover a reasonable satisfaction for the lands, tenements or hereditaments, held or occupied by the defendant or defendants, in an action on the case, for the use and occupation of what was so held and enjoyed ; and if in evidence on the trial of such action, any parole demise, or any agreement (not being by deed) whereon a certain rent was reserved, shall appear, the plaintiff in such action shall not therefore be nonsuited, but may make use thereof as an evidence of the quantum of the damages to be recovered.

C H A P. LXXI.

An ACT to prevent firing the Woods.

Passed 12th March, 1788.

Penalty for firing woods :

How to be recovered and applied.

I. **B**E it enacted by the People of the State of New-York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same, That if any person or persons shall set fire to the woods in any part of this state, he, she or they shall forfeit and pay the sum of ten pounds, to be recovered with costs of suit, in any court having cognizance thereof, by any person or persons who will sue and prosecute for the same ; the one moiety of which forfeiture, when recovered, shall be paid to the overseers of the poor of the town or place where the offence shall have been committed, for the use of the poor thereof ; and the other moiety to the person or persons who will sue and prosecute for the same to effect as aforesaid. And such offender or offenders shall moreover be liable to all such damages as any person or persons shall sustain by such firing the woods as aforesaid.

II. *Provided always, and be it further enacted by the authority aforesaid,* That nothing in this act contained shall be construed to hinder or prevent any person or persons from firing his, her or their own woods ; but if he, she or they do suffer such fire to extend beyond his, her or their own woods, he, she or they shall be subject to the penalty and forfeiture aforesaid, besides being answerable for the damages.

Any person may set fire to his own woods, but liable if it extend further.

III. *And be it further enacted by the authority aforesaid,* That when the woods in any town within this state shall be on fire, the justices of the peace, the supervisor, the commissioners of the highways, and the officers of the militia, (not under the rank of captain) residing in such town, shall and they are hereby severally authorized and required, to order such and so many of the inhabitants of such town liable to work on the highways, and who shall reside within the vicinity of the place where such fire shall be, as they shall severally deem necessary, to repair to the place where such fire shall prevail, and there to assist in extinguishing or stopping the progress of the same, and if any person so ordered to repair to, and assist in manner aforesaid, shall refuse or neglect to comply with such order, every person so disobeying such order, shall forfeit and pay the sum of four shillings, for every day he shall so neglect, or refuse to obey, to be recovered in a summary way, with costs, before any justice of the peace resident in such town, and the oath of the person having given such order, shall be sufficient evidence whereon to convict any delinquent, and the forfeiture so recovered shall be applied as a reward to such person or persons as the officers aforesaid, or the major part of them, shall deem best entitled thereto, for superior exertions at the extinguishment, or in stopping the progress of such fire.

Officers authorized to order inhabitants to extinguish fire.

Penalty for neglect.

[FOURTH SECTION OBSOLETE.]

C H A P. LXXXII.

An ACT to prevent the Destruction of Deer.

Passed 15th March, 1788.

I *BE it enacted by the People of the State of New-York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same,* That if any person or persons shall kill or destroy any wild buck, doe or fawn, or any other sort of deer whatsoever, at any time in the months of January, February, March, April, May, June or July, every such person shall, for every buck, doe or fawn, or other deer so killed or destroyed as aforesaid, contrary to the true intent and meaning of this act, forfeit

Forfeiture for killing deer during certain months :

How to be recovered and applied.

and pay the sum of three pounds, to be recovered with costs of suit, in any court having cognizance thereof, by any person or persons who will sue and prosecute for the same; the one moiety of which forfeiture, when recovered, to be paid to the overseers of the poor of the town or place where the offence shall be committed for the use of the poor thereof; and the other moiety to such person or persons as shall sue and prosecute for the same as aforesaid.

What shall be evidence of the offence.

II. *And be it further enacted by the authority aforesaid,* That every person in whose custody shall be found, or who shall expose to sale any green deer skin, fresh venison, or deer's flesh, at any time in any of the months before mentioned, and shall be thereof convicted before any justice of the peace, by the oath of one credible witness, or by the confession of the party, shall, unless such party shall prove that some other person killed such buck, doe, fawn, or other deer, be deemed and adjudged guilty of the said offence.

Justices, during said months, authorized to issue warrants to search for green deer skins and fresh venison.

III. *And in order the more easily to convict offenders against this act, Be it further enacted by the authority aforesaid,* That it shall be lawful for any justice of the peace in any county of this state, and every such justice is hereby required, upon demand made by any person, assigning a reasonable cause of suspicion, upon oath, (of the sufficiency of which the said justice is to judge) at any time in any of the months before mentioned, to issue his warrant under his hand and seal, to any constable of any town or place in the same county, for searching in the day time in any house, store, out-house, or other place whatsoever, where any green deer skin, fresh venison or deer's flesh, is suspected to be concealed: And in case any green deer skin, fresh venison or deer's flesh, shall upon such search be found, the person in whose custody the same shall be found, or who concealed the same, shall forfeit the sum of three pounds, to be recovered and applied in manner aforesaid.

Forfeiture for hunting deer with blood-hounds or beagles, except in Suffolk county.

IV. *And be it further enacted by the authority aforesaid,* That if any person or persons shall at any time hunt, pursue or destroy any wild buck, doe or fawn, or other deer (except in the county of Suffolk) with any blood-hound or blood-hounds, beagle or beagles, every such person shall, for every such offence, forfeit and pay the sum of three pounds, to be recovered and applied as aforesaid. *Provided,* That nothing in this clause of this act contained, shall be construed to prevent any person or persons from making use of any blood-hounds or beagles, in the hunting, pursuing or destroying of wolves or other destructive wild animals.

[FIFTH SECTION OBSOLETE.]

T W E L F T H S E S S I O N .

C H A P . II.

An ACT concerning Stray Cattle and Sheep.

Passed 5th January, 1789.

I. B E it enacted by the People of the State of New-York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same, That every person who at any time hereafter, between the first day of November and the first day of April, in any year, shall have any strayed neat cattle or sheep, upon his or her inclosed land, shall within twenty days after the coming of such strayed neat cattle or sheep into his or her inclosed land, deliver unto the clerk of the city or town where such neat cattle or sheep shall happen to be, a note in writing, containing their several ages, colours and marks, natural and artificial, as near as may be, together with his or her name and place of abode ; and such clerk shall, on receipt of every such note, make a full entry thereof at large in a book to be provided by him for that purpose ; and such clerk shall have for making such entry the sum of sixpence per head for all the neat cattle, and the sum of twopence for each sheep so entered as aforesaid, to be paid to him by the person delivering such note ; and the person delivering such note, shall have for doing the same, ninepence per head for all neat cattle, and twopence for every sheep described in such note, and may detain such cattle or sheep until the owner thereof shall appear and pay the same, together with the sum paid or due to the clerk for the said entry, and all reasonable charges for keeping the same cattle or sheep.

Persons having strayed cattle or sheep to give notice thereof to the town clerk.

And pay him for making an entry thereof.

And may detain them until he is paid for the same, and for keeping them.

II. *And be it further enacted by the authority aforesaid,* That if no owner shall appear to claim the said cattle or sheep, on or before the first day of May next after such entry so made, or if the owner shall refuse or neglect to pay for giving such notice, and making such entry, and keeping such cattle or sheep, then the possessor, or person who shall have kept them and given such notice as aforesaid, is hereby authorised to sell them at vendue to the highest bidder, first giving at least twenty days notice of the time and place of such sale, by advertisements to be put up at three of the most public places in the city or town where the said neat cattle or sheep have been kept ; and out of the monies arising by such sale, to retain in his or her hands, for his or her own use, the sums due as aforesaid for such notice, entry and keeping of the same cattle or sheep ; and shall, upon demand, pay the residue, after deducting the charges of such sale, to the owner of the same cattle or sheep ; But if the owner of such cattle or sheep shall not appear and demand the same money

When & how to be sold.

Overplus to be paid to the owner :

If not demanded with-

in one year, to
the overseers
of the poor.

within one year next after such sale, he or she shall be, and hereby is forever precluded and barred from recovering any part of the money arising by such sale ; and the same money, after such deductions as aforesaid, shall in such case be paid to the overseers of the poor of such city or town, for the use of the poor thereof ; and the receipt of the said overseers shall be a legal discharge to the possessor, or person who shall have kept such cattle or sheep : and if such possessor, shall not, within thirty days, after the expiration of the said year, pay the remaining money arising by such sale, after the deductions aforesaid, to the overseers of the poor of the place where such neat cattle or sheep were taken up and sold as aforesaid, he or she shall forfeit double the sum so remaining in his or her hands, for the use of the poor of the same place ; to be recovered over and above, and together with the said remaining money, with costs of suit, by the overseers of the poor of the same place for the time being, by action of debt, bill, plaint or information, in any court having cognizance thereof.

Penalty for
not giving no-
tice to the
overseers.

III. *And be it further enacted by the authority aforesaid,* That every person who shall at any time hereafter, between the first day of November and the first day of April in any year, knowingly have any such neat cattle or sheep as aforesaid, on his or her inclosed land, or in his or her possession, and do not acquaint the owner or owners therewith, or give the notice prescribed by this act, within twenty days thereafter, shall not only lose any demand he or she might otherwise have for keeping and feeding the same neat cattle or sheep, but shall also forfeit to the owner thereof, the sum of twenty shillings for every neglect ; to be recovered before any justice of the peace in the county where such neglect shall happen, with full costs of suit.

Clerk's book
for stray cattle
to be open for
inspection.

IV. *And be it further enacted by the authority aforesaid,* That the books to be provided and kept by the respective clerks of each city and town as aforesaid, shall always by them be kept free and open for any person to search therein, and for which search no fee shall be taken by such clerk, on penalty of forfeiting five shillings for every offence, to be recovered by the party aggrieved, with costs of suit, before any justice of the peace in the county where the offence shall be committed.

C H A P . XVIII.

An ACT relative to Mines.

Passed 6th February, 1789.

I. *BE it enacted by the People of the State of New-York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same,* That every person who heretofore has, or hereafter shall make discovery of any mine or mines of gold or silver, within this state, and the executors, administrators or assigns of such person, shall be and hereby is and are exempted, acquitted, released and discharged of and from paying or yielding to the people of this state, as sovereign thereof, or to any commissioner, agent, collector or receiver, for their use, any part, share, portion or dividend whatsoever, of the ore, produce or profit of such mine or mines, for, during and until the full end and term of twenty-one years, to be computed from the time of giving notice of such discovery in the manner herein after directed.

Discoverers of gold and silver mines to have the benefit thereof for 21 years.

II. *And be it further enacted by the authority aforesaid,* That every person discovering, or having discovered a mine or mines of gold or silver within this state, shall before he presumes to work the same, give notice thereof, by information in writing, to the secretary of this state, describing particularly therein, the nature and situation of the same, which notice shall be registered in a book, to be kept by the said secretary for that purpose, and the secretary shall be entitled thereupon to the sum of ten shillings, and no more, for his services in registering such notice.

Notice to be given to the secretary previous to the working such mines ;

To be registered.

III. *And be it further enacted by the authority aforesaid,* That no person or persons shall, on any pretext whatsoever, presume to work or intermeddle with any mine or mines of gold or silver, within this state, after the expiration of the term during which he, she or they is or are privileged as above specified, until he, she or they shall have previously obtained permission of the legislature of this state for that purpose, on such conditions and limitations as the legislature shall deem proper and expedient.

After the expiration of such term, permission of the legislature required.

IV. *And in order to give every reasonable advantage to persons making discovery of such mines as aforesaid, Be it further enacted by the authority aforesaid,* That in all treaties with the legislature for the working of such mines, the person or persons who made discovery of the same, or his, her or their executors, administrators or assigns, shall have the offer of being a party and privy thereto, and shall, in every treaty for working the same, have the preference of all other persons whomsoever.

In treating with them, discoverers to be preferred.

Provided always, That nothing herein contained shall be construed to give any person a right to dig or break

No ground to be dug or broken without

the consent
of the owner.

up the soil or ground of any person or persons, bodies corporate or politic, or of the people of this state, or to work any mine in the same, unless the consent of the owner or owners of such soil or ground, is, for that purpose, previously obtained.

This act not
to affect for-
mer grants.

Provided also, That nothing in this act contained, shall in any wise affect any grants heretofore made by the legislature of this state to persons having discovered mines.

What mines
belong to the
owner of the
soil.

V. And be it further enacted by the authority aforesaid, That all and every person and persons, being a citizen or citizens of any of the United States of America, who now are, or hereafter shall be the owner or owners of any mine or mines, within this state, wherein any ore now is or hereafter shall be discovered, open, found or wrought, of which, upon an average, two equal third parts, or more in value, are copper, tin, iron and lead, or any of those metals, shall and may hold and enjoy the same mine or mines, and ore, and continue in the possession thereof, and dig and work the said mine or mines, or ore, notwithstanding that such mine or mines, or ore, shall be pretended or claimed to belong to the people of this state, as the sovereign thereof; any law usage or custom to the contrary notwithstanding.

THIRTEENTH SESSION.

C H A P. XV.

An ACT ratifying certain Articles in Addition to, and Amendment of, the Constitution of the United States of America, proposed by the Congress.

Passed. 27th February, 1790.

Recital of the
fifth article of
the constitution
of the
United States.

WHEREAS by the fifth article of the constitution of the United States of America, it is provided that the congress, whenever two-thirds of both houses shall deem it necessary, shall propose amendments to the said constitution, which shall be valid to all intents and purposes, as part of the said constitution, when ratified by the legislatures of three-fourths of the several states, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the congress. *And whereas* in the session of the congress of the United States of America, begun and held at the city of New-York, on Wednesday the fourth of March one thousand seven hundred and eighty-nine, it was resolved by the senate and house of representatives of the United States of America in congress assembled, two-thirds of both houses concurring, that the following articles be proposed to the legislatures of the several states, as amendments to the constitution of the United States; all or any of which

articles, when ratified by three-fourths of the said legislatures, to be valid to all intents and purposes, as part of the said constitution, viz.

"ARTICLES in addition to, and amendment of the constitution of the United States of America, proposed by congress, and ratified by the legislatures of the several states, pursuant to the fifth article of the original constitution.

"Article the First. After the first enumeration required by the first article of the constitution, there shall be one representative for every thirty thousand, until the number shall amount to one hundred, after which the proportion shall be so regulated by congress, that there shall be not less than one hundred representatives, nor less than one representative for every forty thousand persons, until the number of representatives shall amount to two hundred; after which the proportion shall be so regulated by congress, that there shall not be less than two hundred representatives, nor more than one representative for every fifty thousand persons.

Amendments
proposed by
Congress.

"Article the Second. No law varying the compensation for the services of the senators and representatives, shall take effect, until an election of representatives shall have intervened.

"Article the Third. Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

"Article the Fourth. A well regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed.

"Article the Fifth. No soldier shall, in time of peace, be quartered in any house without the consent of the owner; nor in time of war, but in a manner to be prescribed by law.

"Article the Sixth. The right of the people, to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated; and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

"Article the Seventh. No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury; except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject, for the same offence, to

be twice put in jeopardy of life or limb ; nor shall be compelled in any criminal case to be a witness against himself ; nor be deprived of life, liberty or property, without due process of law ; nor shall private property be taken for public use, without just compensation.

" *Article the Eighth.* In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the state and district wherein the crime shall have been committed ; which district shall have been previously ascertained by law ; and to be informed of the nature and cause of the accusation ; to be confronted with the witnesses against him ; to have compulsory process for obtaining witnesses in his favour, and to have the assistance of counsel for his defence.

" *Article the Ninth.* In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved ; and no fact tried by a jury shall be otherwise re-examined in any court of the United States, than according to the rules of the common law.

" *Article the Tenth.* Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

" *Article the Eleventh.* The enumeration in the constitution of certain rights, shall not be construed to deny or disparage others retained by the people.

" *Article the Twelfth.* The powers not delegated to the United States by the constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people."

And whereas the legislature of this state have considered the said articles, and do agree to the same, except the second article ; Therefore,

Be it enacted by the People of the State of New-York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same, That the said articles, except the second, shall be, and hereby are ratified by the legislature of this state.

Ratified except the second

C H A P. XXV.

An ACT for securing and improving certain Lands in the City of New-York, for Public Uses, and for other Purposes therein mentioned.

Passed 16th March, 1790.

WHEREAS Fort George, in the city of New-York, and the battery adjacent thereto, are at present useless for the purpose of defence : Therefore,

I. Be it enacted by the People of the State of New-York represented in Senate and Assembly, and it is hereby enacted by the authority of the same, That all that part of For

Part of Fort George reserved for public buildings.

George, in the city of New-York, and the lands adjoining thereunto, belonging to the people of this state; beginning at a stake standing on the easterly side of the Broadway continued, at a place which is eighty-six feet distant, on a course south, thirty-seven degrees and forty-five minutes east, from the south-east corner of the dwelling-house of captain Archibald Kennedy, and running thence easterly, to the north-east corner of the old secretary's office, on Whitehall-street, thence southerly, along the west side of Whitehall-street to the ground of captain Thomas Randall; then westerly along the north side of his ground, and along the rear of the lots which front on Pearl-street, as far as they extend; then north, fifty-seven degrees and forty-five minutes west, until a course north, thirty-two degrees and fifteen minutes east, will strike the place of beginning, and then north, thirty-two degrees and fifteen minutes east, to the place of beginning, shall be, and hereby are declared to be for ever reserved for the purpose of erecting public buildings, and such works of defence as the legislature shall from time to time direct; *And further*, that the same shall not at any time or times hereafter, be sold or appropriated to, or for any private use or purpose whatever.

II. *And be it further enacted by the authority aforesaid*, That all the lands belonging to the people of this state, within the bounds following, to wit: Beginning at the north-east corner of the old secretary's office, and running thence southerly along Whitehall-street to the East-river at Whitehall-slip, then southerly, westerly and northerly, along the East-river, the bay and Hudson's river, to the north side of the street which runs on the south side of Archibald Kennedy's house, continued to Hudson's river; thence along the same to the south-east corner of the said Kennedy's house; thence south, thirty-seven degrees and forty-five minutes east, eighty-six feet, thence easterly to the place of beginning (excepting thereout, that part reserved to the people of this state, as described in the preceding section of this act) as well as all the lands within the bounds and limits aforesaid, which the said corporation of the city of New-York claim title to, shall be, and the same are hereby vested in the mayor, aldermen and commonalty of the city of New-York, to remain for the purpose of erecting public buildings, and works of defence thereon; but without any power to dispose thereof, for any other use or purpose whatsoever, and without any power of selling any part thereof.

Other lands adjacent thereto, vested in the corporation of New-York, for public buildings and works of defence.

[THE THIRD, FOURTH, FIFTH, SIXTH, AND SEVENTH SECTIONS OBSOLETE.]

FOURTEENTH SESSION. C H A P. XX.

An ACT for determining Differences by Arbitration.

Passed 28th February, 1791.

WHEREAS it hath been found by experience, that references made by rule of court, have contributed much to the ease of the parties in the determining their differences, because the parties thereby become obliged to submit to the award of the arbitrators, under the penalty of imprisonment for their contempt, in case they refuse submission : Now for promoting trade and rendering the awards of arbitrators the more effectual in all cases, for the final determination of controversies referred to them by merchants and traders, or others, concerning matters of account, or trade, or other matters :

Arbitration
by rule of
court & man-
ner of pro-
ceedin^g.

I. Be it enacted by the People of the State of New-York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same, That it shall and may be lawful for all merchants and traders and others, desiring to end any controversy, suit or quarrel, controversies, suits or quarrels, for which there is no other remedy but by personal action or suit in equity, by arbitration to agree, that their submission of their suit or controversy to the award or umpirage of any person or persons should be made a rule of any court of record in this state, which the parties shall choofe ; and to insert such their agreement in their submission, or the condition of the bond or promise whereby they oblige themselves respectively to submit to the award or umpirage of any person or persons ; which agreement being so made and inserted in their submission, or promise, or condition of their respective bonds, shall, or may, upon producing an affidavit thereof, made by the witnesses thereunto, or any one of them, in the court of which the same is agreed to be made a rule, and reading and filing the same affidavit in court, be entered of record in the same court ; and a rule shall thereupon be made by the said court, that the parties shall submit to, and finally be concluded by the arbitration, or umpirage, which shall be made concerning them, by the arbitrators or umpire, pursuant to such submission ; and in case of disobedience to such arbitration or umpirage, the party refusing or neglecting to perform and execute the same, or any part thereof, shall be subject to all the penalties of contemning a rule of court, when he is a suitor or defendant in such court, and the court on motion, shall issue process accordingly, which process shall not be stopped or delayed in its execution, by any order, rule, command, or process of any other court, either of

Penalty for
disobedience.

law or equity, unless it shall be made appear on oath to such court, that the arbitrators or umpire misbehaved themselves, and that such award, arbitration or umpirage, was procured by corruption or other undue means.

II. *And be it further enacted by the authority aforesaid,* That any arbitration or umpirage, procured by corruption or undue means, shall be judged and esteemed void, and of none effect, and accordingly be set aside by any court of law or equity, so as complaint of such corruption or undue practice, be made in the court where the rule is made for submission, to such arbitration or umpirage, before the last day of the next term, after such arbitration or umpirage made and published to the parties.

Arbitration
procured by
undue means,
to be void.

SIXTEENTH SESSION.

C H A P. IV.

An ACT to cede the Jurisdiction of certain Lands on Montock-Point, to the United States of America, for the Purposes therein mentioned.

Passed 18th December, 1792.

WHEREAS by an act of the congress of the United States of America, entitled *An act to erect a light-house on Montock-Point, in the state of New-York*, passed the 12th day of April, 1792, it is enacted and declared, That as soon as the jurisdiction of such land on Montock-Point, in the state of New-York, as the President of the United States, shall deem sufficient and most proper for the convenience and accommodation of a light-house, shall have been ceded to the United States, a light-house may be erected thereon. *And whereas*, it is meet and proper that such cession should be made under certain limitations ; Therefore,

Recital.

Be it enacted by the People of the State of New-York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same, That the jurisdiction in and over all that certain tract of land at Montock-Point, in the county of Suffolk, within this state, and herein after particularly described, shall be, and hereby is ceded to the United States of America, for the purposes aforesaid : *Provided nevertheless*, that such jurisdiction so ceded as aforesaid, shall not extend, or be construed to extend, so as to impede or prevent the execution of any process at law under the authority of this state, except so far forth, as such process may affect any the real or personal property of the United States, within the said tract, and that

Jurisdiction
of Montock-
Point ceded
to the United
States.

Proviso.

Boundaries
defined.

all the lands and tenements within the said tract; shall be, and forever hereafter are exonerated and discharged from any taxes which may be laid under the authority of the legislature of this state, and the tract of land above mentioned, in and over which the jurisdiction is so ceded as aforesaid, is more particularly known by the name of Turtle-Hill, and is butted and bounded as follows, to wit : Beginning at the beach and at a rock laying on a hommock at the bottom of the said hill, and runs thence north, eighty-two degrees west, eleven chains and fifty-eight links; thence south five degrees west, five chains ; thence south fifteen degrees east, nine chains, to a rock marked *John Champlain*, 1788 ; thence on the same course to low water mark ; thence northeasterly along low water mark, until the point of beginning bears north, eighty-two degrees west ; thence to the place of beginning.

SEVENTEENTH SESSION.

C H A P. XIX.

An ACT concerning Pardons,

Passed 12th March, 1794.

BE it enacted by the People of the State of New-York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same, That it shall and may be lawful for the person administering the government of this state for the time being, in all cases in which he is authorized by the constitution to grant pardons, to grant the same upon such conditions, and with such restrictions, and under such limitations, as he may think proper.

C H A P. XLVII.

An ACT ratifying a certain Article proposed by Congress, as an Amendment to the Constitution of the United States of America.

Passed the 27th March, 1794.

Recital of the
fifth article of
the constitution
of the
United States.

WHEREAS by the fifth article of the constitution of the United States of America, it is provided, that the congress, whenever two thirds of both houses shall deem it necessary, shall propose amendments to the said constitution, which shall be valid to all intents and purposes as part of the said constitution, when ratified by the legislatures of three fourths of the several states, or by conventions in three fourths thereof, as the one or the other mode of ratification may be proposed

by congress. *And whereas*, in the session of the congress of the United States of America, begun and held at the city of Philadelphia, in the state of Pennsylvania, on Monday the second of December, one thousand seven hundred and ninety-three, it was resolved, by the senate and house of representatives of the United States of America, in congress assembled, two thirds of both houses concurring, that the following article be proposed to the legislatures of the several states, as an amendment to the constitution of the United States, which, when ratified by three fourths of the said legislatures, shall be valid as part of the said constitution, viz. The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States, by citizens of another state, or by citizens or subjects of any foreign state. *And whereas* the legislature of this state have considered the said article, and do agree to the same : Therefore,

Amendment
proposed by
congress.

Be it enacted by the People of the State of New-York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same, That the said article shall be, and hereby is ratified by the legislature of this state.

Ratified.

NINETEENTH SESSION.

C H A P. XXV.

An ACT to prevent Intrusions on Lands within the Jurisdiction of this State, under pretence of Title from the State of Connecticut.

Passed 11th March, 1796.

WHEREAS information has been received by this legislature, that certain persons under pretence of title derived from a quit claim grant from the state of Connecticut, for a considerable extent of territory within this state, do by various improper practices endeavor to draw into question the jurisdiction of this state over the said territory, excite opposition to the lawful authority thereof, and defame the titles of persons holding lands by grants under the great seal of this state, or under the great seal of the late colony of New-York ; in order therefore, to counteract such practices, and to preserve the just rights of the citizens of this state,

I. *Be it enacted by the People of the State of New-York, represented in Senate and Assembly, That if any person shall intrude or settle on any of the waste or ungranted lands of this state, under or by virtue of any title or claim derived from or under the state of Connecticut, take possession of or settle on any lands within the jurisdiction of*

Any person
settling on
territory un-
der the pre-
tended title of
Connecticut,
deemed to
hold by a fo-
reign title

against this
state :

Governor di-
rected to re-
move such
persons.

this state, every such person shall be deemed as holding such lands by a foreign title against the right and sovereignty of the people of the state of New-York ; and it shall be the duty of the person administering the government of this state for the time being, from time to time, to remove or cause to be removed by such means, and in such manner as he shall judge proper, all such persons so intruding, settling or taking possession of any lands within the jurisdiction of this state, and to cause all the buildings of such persons to be destroyed, and for that purpose in his discretion to order out any proportion of the militia from any part of this state ; and every detachment so from time to time to be ordered out, shall receive the same pay and rations, and be subject to the same rules and regulations as is provided by law, when any proportion of the militia of this state is ordered out, in case of invasion or other emergency.

Any person
conveying or
receiving such
title, deemed
guilty of a
public offence,
and if a citi-
zen, on con-
viction, dis-
qualified to
hold any
office.

II. *And be it further enacted*, That every person who shall bargain, sell or convey, or by any ways or means, obtain, get, or procure any pretended right or title, or make or take any promise, grant or covenant to have any right or title of any person or persons, in or to any lands, tenements or hereditaments within this state, under the said pretended title from the state of Connecticut, shall be deemed guilty of a public offence and high misdemeanor against the people of this state, and may be prosecuted for the same by indictment or information in any court of record within this state, and upon conviction be punished by fine and imprisonment in the discretion of the court, and if a citizen of this state, shall moreover be disabled for ever thereafter, from electing or being elected to any office, place or trust within this state.

The public of-
ficers in cer-
tain counties,
to report the
names of such
settlers.

III. *And be it further enacted*, That it shall and hereby is made the duty of and strictly enjoined on the justices of the peace, sheriffs and other officers of the government of this state, within the several counties of Otsego, Tioga and Ontario, immediately after the passing of this act, and from time to time thereafter, to make enquiry in the said counties respectively, in which they have jurisdiction, whether any person or persons have already settled, or shall hereafter settle or claim to hold lands within the said counties under pretence of title derived from such quit claim or other grant from the said state of Connecticut, and to report the name and names of every person so settling or claiming, to the person administering the government of this state for the time being, to the end, that they may be proceeded against according to law.

Any suit un-
der such title,
to be defended
by the attor-
ney general,
at the expense
of the state.

IV. *And be it further enacted*, That in case any suit shall be instituted by any person whomsoever claiming under any grant from the state of Connecticut, for the recovery of any lands within either of the said counties,

the person administering the government of this state for the time being, upon notice thereof, shall direct the attorney-general of this state to defend every such suit, and the faith of this state is hereby pledged for defraying the expence of all the costs and charges of defending every such suit as aforesaid.

C H A P. XXXII.

An ACT directing the Manner of appointing Electors for the Election of a President and Vice-President of the United States.

Passed 26th March, 1796.

BE it enacted by the People of the State of New-York, represented in Senate and Assembly, That whenever an election of a president and vice-president of the United States, shall become necessary at the ordinary period, or prior thereto, electors shall be appointed in this state for such election, in the manner provided by the constitution of this state for the appointment of delegates to represent this state in the then general congress of the United States of America. And that the legislature shall meet for that purpose on the first Tuesday of November next, and on the first Tuesday of November in every fourth succeeding year. And the electors shall meet and give their votes at the city of Hudson, in the county of Columbia, at the time and in the manner directed in and by the act of congress, entitled *An act relative to the election of a president and vice-president of the United States, and declaring the officer who shall act as president in case of vacancies in the offices both of president and vice president*, and then and there do, execute and perform all the duties enjoined on them by the said act.

Electors how to be appointed:

Legislature when to meet for that purpose.

Electors when & where to meet.

II. And be it further enacted, That the executive of this state immediately after any appointment of electors for the election of a president and vice-president of the United States, shall by express, at the expence of this state, cause notice of such appointment to be given to each of the persons so appointed, and shall also on or before the meeting of the electors, cause such list of the names of the electors to be delivered to them as is directed by the said act of congress.

Executive to give notice of their appointment, and to cause a list of all the electors to be delivered to them.

III. And be it further enacted, That whenever an election of a president and vice-president shall become necessary prior to the ordinary period, the executive of this state shall, by proclamation, convene the legislature of this state on the first Tuesday of November thereafter, in order that electors may be appointed for the purpose.

Executive to convene the legislature to appoint electors in case of an election before the ordinary period.

T W E N T I E T H S E S S I O N .

C H A P . L I I .

An ACT limiting the Period of bringing Claims and Prosecutions against Forfeited Estates.

Passed 28th of March, 1797.

WHEREAS the title deeds and other documents relative to forfeited estates were generally carried away by the former proprietors, whose conduct caused their forfeiture, and the title of the State as resulting from such forfeitures is thereby peculiarly liable to be obscured or defeated : Therefore,

Limitation
of claims
against for-
feited estates.

I. *Be it enacted by the People of the State of New-York, represented in Senate and Assembly,* That no person or persons, bodies politic or corporate, who now have, or shall or may hereafter have any estate, right, title, claim or demand, in or to any lands, messuages, tenements or hereditaments supposed to have been forfeited to the people of this state, in consequence of the attainder or conviction of any person or persons for any act or crime done or committed during the late war, and which have been heretofore granted or conveyed to any person or persons, bodies politic or corporate, by the commissioners of forfeitures, or other person or persons duly authorized for that purpose on the part of this state, shall, after the expiration of five years from and after the passing of this act, and where the estate, right, title, claim or demand shall hereafter accrue, then after the expiration of five years after the same shall so accrue, have, prosecute, sue or maintain any action or suit at law for the recovery thereof, against the right or title so granted or conveyed by the people of this state, as above said.

All persons su-
ing after-
wards, to be
barred.

II. *And be it further enacted,* That if any person or persons, bodies politic or corporate, shall and do at any time after the said respective periods of five years, sue or prosecute any suit or action at law, or make any title or claim of, in or to any of the said lands, tenements or hereditaments so as aforesaid granted by such commissioners of forfeitures, or other person or persons duly authorized for that purpose on the part of this state, that then and in such case, such person or persons, bodies politic or corporate, their heirs and successors, so suing or prosecuting such suit or action, shall from thenceforth be utterly barred forever of all and every such suit or action, estate, right, title or claim so thereafter to be sued, prosecuted or had of, in and to the same, against the right or title so granted or conveyed by the people of this state as aforesaid.

Proviso in fa-
vour of in-
fants, *some co-*

III. *Provided always, and be it further enacted,* That if any person or persons who is, are or shall be entitled to

sue or prosecute such suit or action, or who hath, have, or shall have such right or title, shall be within the age of twenty-one years, *feme covert*, or insane, that then such person or persons, his, her and their heirs and assigns, shall or may at any time within five years next after his, her or their coming to full age, or of sound mind, or dis-coverture, bring, sue and prosecute such suit or action, and at no time thereafter.

verts and persons insane.

C H A P. LXIV.

An ACT to regulate Ferries within this State.

Passed 30th March, 1797:

I. **B**E it enacted by the People of the State of New-York, represented in Senate and Assembly, That from and after the first day of November next, no person or persons, except within the southern district of this state, the county of Orange, and the county of Clinton, shall or may use any ferry or ferries for transporting across any river, stream or lake within this state, any person or persons, or any goods or merchandize, for profit or hire, unless in the manner herein after directed, under penalty of forfeiting for each offence the sum of five dollars, to be recovered by action of debt, before any justice of the peace of the county where such offence shall be committed, or if the same be on waters that divide two counties, then in either of the counties next adjacent the place where the said offence shall be committed; which said penalties shall be one half to be paid to the overseers of the poor in the town wherein the forfeiture is recovered, to be applied to the use of the poor thereof, and the other half to the person who shall sue for and recover the same.

No persons, except in certain counties, to keep any ferry, unless in the manner herein after directed, under a penalty.

Penalty how recovered and applied.

II. *And be it further enacted,* That the court of common pleas in each of the counties of this state in their sessions, may and shall grant licences for keeping ferries in their respective counties, to as many suitable persons as they may think proper, which licence shall continue for one year and no longer. And every person who shall apply for such licence shall, before the same is granted, enter into a recognizance to the people of this state in the sum of one hundred dollars, faithfully to keep and attend such ferry, for the keeping of which the said person shall apply, with a sufficient and safe boat, or with such and so many sufficient and safe boats, and so many men to work the same as shall be deemed necessary, together with sufficient implements for said ferry during the several hours in each day, and at the several rates as the courts of common pleas in the several counties shall from time to time order, direct and determine; which recognizance shall

Courts of common pleas annually to grant licences for keeping ferries.

Persons licensed to enter into recognizance.

Rates of ferriage to be established by the courts.

Ferryman liable to a penalty for any offence;

And, on conviction, his recognizance to be forfeited.

Licence to keep a ferry over waters which divide two counties, how to be obtained.

Not to affect existing rights

Licence to be granted to no one but the owner or occupier of the adjoining land, unless &c.

Clerks fee for entering such licence.

forthwith be lodged on file with the clerk of the said county; and every ferryman who shall offend herein may be indicted for the same before any court of record in this state proper to hear the same, and shall be subject to such fine or penalty as such court may order and adjudge. *Provided*, The same shall not exceed the sum of twenty-five dollars for each offence. And on proof of such conviction the court of general sessions shall direct the recognizance given by such person to be estreated for the use of the people of this state. And when any waters over which a ferry may be erected or used, divides two counties, the licence obtained in form aforesaid in either of the said counties shall be sufficient to enable the person obtaining the same, to transport persons, goods, wares and merchandize to and from either side of said waters. *Provided nevertheless*, That nothing in this act contained shall in any wise be understood to affect or alter the ferries granted by charter to the corporations of Albany and Hudson, or to infringe upon, alter or impair any grants of this state, or any legal right or privilege whatever, belonging to or of right appertaining to any individual or corporation, any thing in this act to the contrary notwithstanding. *Provided also*, That no such licence shall be granted to any person other than the owner or occupant of the land through which the highway adjoining to any ferry shall run, unless such owner shall neglect to apply for such licence in manner by this act directed.

III. *And be it further enacted*, That the clerks of the respective counties shall be entitled to receive for entering each and every licence by virtue of this act, and for a copy thereof, one dollar and no more.

T W E N T Y - F I R S T S E S S I O N .

C H A P . C I V .

An ACT regulating the future Meetings of the Legislature.

Passed April 6th, 1798.

Legislature when and where to meet

I. **B**E it enacted by the People of the State of New-York, represented in Senate and Assembly, That in case the person administering the government of this state for the time being, shall not, on or after the first Monday of July, and before the last Tuesday in January, in any year, convene the legislature by proclamation; then the legislature shall meet on the said last Tuesday of January, without any summons or notification whatsoever, at such place as the senate and assembly, at their meeting next preceding the said last Tuesday of January, shall have

adjourned to ; and in case there shall have been no such adjournment, or the senate and assembly shall not have adjourned to a place certain, then they shall convene on the said last Tuesday of January then next, at the city of Albany.

[SECOND SECTION OBSOLETE.]

C H A P. CXII.

An ACT to Cede the Jurisdiction of certain Lands in this State to the United States.

Passed April 6th, 1798.

WHEREAS the congress of the United States have passed a law authorising the erection of a light-house on Eaton's Neck, near Huntington Bay, on Long-Island, on condition of a cession on the part of this state to the United States of the jurisdiction of such tract as may be deemed sufficient and proper for that purpose by the president of the United States : Therefore,

Preamble requiring an act of congress.

I. *Be it enacted by the People of the State of New-York, represented in Senate and Assembly,* That as soon as the president of the United States shall cause a certificate under his hand and seal to be filed in the office of the secretary of this state, describing the situation and quantity of land he may have chosen for the purpose aforesaid, not exceeding ten acres, and certifying that the same are purchased of the present proprietor thereof, the jurisdiction of the said lands so described shall thereupon be vested in the United States : *Provided nevertheless,* that such cession shall not be construed to extend to prevent the execution of any process civil or criminal, issuing under the authority of this state ; and the lands so described and ceded shall be, and hereby are, forever hereafter exonerated and discharged from any taxes to be laid under the authority of this state.

Jurisdiction of certain lands on Eaton's Neck, when and how to be vested in the United States.

Lands ceded exempted from state taxes.

[THE SECOND AND THIRD SECTIONS OBSOLETE.]

TWENTY-SECOND SESSION.

[FIRST MEETING.]

C H A P. I.

An ACT authorising the Arrest of Ships or Vessels, for Debts contracted by the Master, Owner or Consignee, for and on Account of such Ships or Vessels, in this State.

Passed August 10th, 1798.

Ships or vessels owned by non-residents, liable to all debts contracted by the master, &c.

Such debts a lien upon such vessels, and how preferred.

Persons having such claims to the amount of 100 dollars, how to proceed for relief :

Warrant to issue to seize such vessel :

Plaintiff, on the warrant, how to proceed :

Court may refer to referees.

I. **BE** it enacted by the People of the State of New-York, represented in Senate and Assembly, That ships or vessels of all descriptions, built, repaired or equipped in this state, and owned by any person or persons not resident therein, shall be liable for all debts contracted by the master or commander, owner or consignee thereof, on account of any work done, or any supplies or materials furnished by any mechanic, tradesman, or others, for, on account, or towards the building, repairing, fitting, furnishing or equipping such ships or vessels ; and that debts so contracted, shall be a lien upon such ships or vessels, their tackle, apparel and furniture ; and shall have preference to any, and all other debts, due and owing from the owner thereof, except mariners' wages.

II. *And be it further enacted*, That any person or persons, whose demands for materials furnished, or labour done, for any such ship or vessel, amount to one hundred dollars, may apply to the judge or justice of any court of record within this state, having cognizance thereof, where such ship or vessel owned as aforesaid then actually is, or where such work shall have been done, or supplies furnished ; and on requisition of the said party or parties, after he or they shall have made oath or affirmation to their account, which shall be left with the said judge or justice, it shall be lawful for the said judge or justice to issue his warrant, directed to the sheriff of the city or county, commanding him to attach, seize, and safely keep such ship or vessel, her tackle, apparel and furniture.

III. *And be it further enacted*, That upon the return of such attachment, the plaintiffs may join in a declaration against the said ship or vessel, setting forth briefly their demands, and alledging work to have been done, and the articles to have been furnished at the request of the owner, master or consignee, as the case really was, and averring demand and refusal of such owner, master or consignee, to which declaration shall be annexed the accounts of the respective plaintiffs ; and it shall be lawful for the court in which such action shall be brought after judgment by default, or issue joined, to refer the said demands or accounts to three indifferent persons, to be named by

the said court ; and the same proceedings shall be had in regard to such reference, and such further proceedings as is provided by the second, third and fourth sections of the act, entitled *An act for the amendment of the law, and the better advancement of justice*, passed the 27th of February, 1788.*

IV. *And be it further enacted*, That if the master, owner or consignee of such ship or vessel, shall, before final judgment is entered, appear before one of the judges or justices of the said court, and enter into bonds with such sureties, as in the opinion of the said judge or justice will be sufficient to answer and satisfy all the demands which shall then be actually exhibited against such ship or vessel, or discharge the same, and pay the costs of suit ; then the said ship or vessel shall be discharged from the attachment, and be permitted to proceed on her voyage.

Master or owner how to obtain a discharge of the vessel.

V. *And be it further enacted*, That the said lien shall cease immediately after such ship or vessel shall have left this state.

When the lien shall cease.

* The act here referred to was revised and re-enacted at the 24th session, under the same title : Sec 2d, 3d, and 4th sections of the revised act.

C H A P. III.

An ACT to preserve and support the Jurisdiction of this State.

Passed August 10th, 1798.

WHEREAS evil minded persons under pretence of authority derived from other states, or from the general government of the United States, to serve process within the state or district of New-York, have excited disturbances among the peaceful citizens thereof : *And whereas* much mischief is apprehended from such practices, by means that our citizens are called out of their proper jurisdiction to answer to such illegal processes, and may be much harrassed in defending the same : *And whereas* the entire jurisdiction of this state ought to be preserved and respected : Therefore,

I. *Be it enacted by the People of the State of New-York, represented in Senate and Assembly*, That any person not appointed under the authority of the United States, or this state, to execute process within the state or district of New-York, nor being an inhabitant thereof, who shall presume to come within the same, under pretence of any authority whatever, to serve or execute any writ or process against any citizen of this state, or against the goods and chattels, lands or tenements of any citizen as aforesaid, shall be deemed and adjudged guilty of a high misdemeanor ; and being thereof duly convicted, shall be sentenced to imprisonment in the state prison of this state for the

Persons executing process, guilty of a high misdemeanor.

term of seven years, and be confined in the same to hard labor, or solitude, or both, at the discretion of the court before whom the conviction shall be had : *Provided*, That nothing in this act shall extend to any person who shall serve a process to compel the attendance of any witness before either house of congress, or before any court of the United States.

All such process deemed void.

II. *And be it further enacted*, That all judgments and decrees passed or rendered in pursuance of such writ or process, or notice served, or to be served, by whatever name the same may be called, shall be deemed and adjudged null and void to all intents and purposes : And the better to bring to condign punishment any person who may offend in the premises,

Duty of officers with respect to offenders.

Reward for apprehending any offender.

III. *Be it further enacted*, That it shall be the duty of all sheriffs, constables and magistrates within this state, to cause to be apprehended all offenders against this act : And if any person, a citizen of this state, shall cause to be taken and apprehended any such offender, so that he may be brought to proper punishment, such person shall be entitled to receive five hundred dollars from the treasury of this state.

[SECOND MEETING.]

C H A P. XVII.

An ACT concerning Wolves and Panthers.

Passed February 22d, 1799.

Supervisors authorized to grant a reward for killing panthers:

Money how to be raised.

I. **B**E it enacted by the People of the State of New-York, represented in Senate and Assembly, That from and after the first day of May next, it shall and may be lawful for the supervisors of each and every of the counties within this state, or a major part of them, at their annual meetings, to declare whether any, and what reward shall be given by their respective counties for the killing of any wolf or wolves, panther or panthers therein, and the said reward shall be a county charge, and assessed, raised and levied together with the other necessary and contingent charges of the county, and shall be paid in such manner and under such restrictions as the board of supervisors, allowing the reward, shall direct: *Provided*, That no reward to be allowed by any of the said board of supervisors for the killing of an wolf or panther, shall exceed the sum of ten dollars.

[THE SECOND SECTION OBSOLETE.]

C H A P. XLII;

An ACT directing certain Bills of Credit and Certificates belonging to this State to be cancelled.

Passed 23d March, 1799.

BE it enacted by the People of the State of New-York, represented in Senate and Assembly, That it shall and may be lawful for the president of the senate, and the speaker of the house of assembly, and the attorney-general, and the secretary of this state for the time being, or any three of them, and they are hereby directed, on the first Tuesday in June next, and on the first Tuesday in June in every year thereafter, to meet at the office of the secretary of this state, and the comptroller shall thereupon then deliver unto them all the bills of credit in his possession called new emission, and also all the certificates in his possession signed by John Haring, Joseph Gathrie and Thomas Moffat, or any two of them, or by Gerard Bancker, late treasurer of this state, or by the late auditor of this state, together with two lists of such bills and certificates containing the date and amount of every such bill and certificate, and the number and value thereof; and they shall compare the said bills and certificates with the said lists thereof, and then destroy the said bills and certificates by burning the same to ashes, and shall certify at the bottom of such lists that they have destroyed all the bills and certificates designated therein, and shall deliver one of the same lists so certified to the said comptroller, and shall deliver the other list so certified as aforesaid, to the legislature.

The president of the senate, the speaker of the assembly, the attorney-general and secretary, annually to meet and destroy certain bills of credit, &c.

Certified lists of such bills to be delivered to the legislature and the comptroller.

TWENTY-THIRD SESSION.

C H A P. VI.

An ACT to cede to the United States the Jurisdiction of certain Islands situate in and about the Harbour of New-York.

Passed 15th February, 1800.

BE it enacted by the People of the State of New-York, represented in Senate and Assembly, That the following islands, in and about the harbour of New-York, and in and about the fortifying of which this state hath heretofore expended or caused to be expended large sums of money, to wit: All that certain island called Bedlow's island, bounded on all sides by the waters of the Hudson river; all that certain island called Oyster island, bounded on all sides by the waters of the Hudson river, and all that certain island called Governor's island, on which Fort Jay is situate, bounded on all sides by the waters of the East river and Hudson river, shall hereafter be subject

Certain islands in and about the harbor of New-York, made subject to the jurisdiction of the United States.

to the jurisdiction of the United States. *Provided*, That this cession shall not extend to prevent the execution of any process, civil or criminal, issuing under the authority of this state, but that such process may be served and executed on the said islands respectively, any thing herein contained notwithstanding.

C H A P. LXIV.

An ACT complying with the Act of Congress respecting Balances reported against certain States by the Commissioners appointed to settle the Accounts between the United States and the several States.

Passed 28th March, 1800.

A sum of money to be expended by this state, in fortifications, on certain terms.

I. **B**E it enacted by the People of the State of New-York, represented in Senate and Assembly, That this state doth hereby engage to expend within five years after the passing of this act, in erecting, enlarging and compleating fortifications within this state, for the defence of the United States, at such place or places, (the jurisdiction whereof shall be previously to such expenditure ceded by this state to the United States, with reservation, that process civil and criminal, issuing under the authority of this state, may be served and executed therein) and according to such plan or plans as shall be approved by the president of the United States, a sum in money which, with the sums already expended by this state since the establishment of the present government of the United States, in fortifying any place within this state, and for which this state may be credited as herein after mentioned; shall be equal to the sum assumed by the United States in the debt of this state, upon the principles mentioned and contained in the act of congress, entitled *An act respecting balances reported against certain states by the commissioners appointed to settle the accounts between the United States and the several states.*

Comptroller to liquidate and settle certain sums with the secretary of the treasury of the United States.

II. *And be it further enacted*, That it shall be lawful for the comptroller of this state, and he is hereby authorized and required to liquidate and settle with the secretary of the treasury of the United States, the sum for which this state is to be credited, according to the directions of the said act of congress, for money expended in fortifying any place in this state, including the cannon and military stores belonging to this state, now in or appertaining to such fortifications, and to procure credit to be given to this state on the books of the United States for the same, as well as for the sum hereby engaged to be expended in erecting, enlarging and compleating fortifications for the defence of the United States, and also to settle with the

Secretary of the treasury of the United States, the rate at which credits shall be given for the money which shall be expended by virtue of this act.

III. *And be it further enacted*, That the sum of twenty thousand dollars shall be, and hereby is appropriated for the purpose aforesaid in the present year, which sum shall be paid out of any unappropriated money that may be in the treasury, and shall be expended in erecting, enlarging and completing fortifications in this state for the defence of the United States, according to the directions of the said act of congress; and the person administering the government of this state shall be, and hereby is required to procure the necessary plans and directions for the purposes aforesaid, and to appoint and employ such agent or agents as he may deem proper, to superintend the work, and to purchase the requisite materials, which agents shall be respectively accountable to the United States, if required, as well as to this state, for the expenditure of all money to be received by them.

Appropriation for the present year.

IV. *And be it further enacted*, That the comptroller is hereby authorized and required to liquidate and settle with the secretary of the treasury of the United States the sum of money expended by this state in recently erecting fortifications in the city of New-York, and for the fortifications on the northern and western frontiers of this state, including the cannon and military stores now in, or appertaining to such fortifications, and to procure credit to be given to this state on the books of the United States for the same; *Provided*, any law for that purpose shall be passed by the congress of the United States.

Comptroller to make a further liquidation with the said secretary.

V. *And be it further enacted*, That if it shall be deemed necessary to expend, under the directions of the president of the United States, the whole or any part of the sum by this act engaged to be expended, in erecting, enlarging or completing fortifications on York island, or in any other place in this state, it shall be lawful so to do; *Provided*, the congress of the United States shall dispense with the cession of the jurisdiction of the place or places so to be fortified.

How the sum engaged to be expended, may be further applied.

C H A P. LXXVI.

An ACT to vest in the United States the Title to certain Lands on Staten Island.

Passed 1st April, 1800.

WHEREAS in and by the act of the legislature of this state, entitled *An act to provide against infectious and pestilential diseases*, passed February the 25th, 1799, provision is made to vest in this state the fee simple of a tract of land, not exceeding thirty acres, on the east-

terly part of Staten island. And whereas the United States have laid out and expended a large sum of money in making improvements on the said tract for the purpose of facilitating commerce, and collecting duties in the port of New-York, and are desirous of expending more money for the same purpose ; Therefore,

Certain islands in and about the harbor of New-York, made subject to the jurisdiction of the United States.

Be it enacted by the People of the State of New-York, represented in Senate and Assembly, That the governor of this state for the time being, (as soon as this state shall become vested with title to the said tract in pursuance of the said act) shall be and hereby is authorized to grant to the United States the fee simple of such part of the said tract, not exceeding five acres, on which the said improvements have been made, together with so much land under the water contiguous thereto, as to him may appear necessary for the purpose aforesaid, for such sum or consideration as the state shall pay for the same ; *Provided,* That such grant shall expressly reserve the jurisdiction of this state.

TWENTY-FOURTH SESSION.

C H A P . VIII.

An ACT concerning the Circuit Courts, and Sitzings, and the Courts of Oyer and Terminer and Gaol Delivery.

Passed February 20th, 1801.

Circuit courts when & how to be held.

I. *BE it enacted by the People of the State of New-York, represented in Senate and Assembly,* That the justices of the supreme court, or some or one of them, shall once in every year, and oftener if need be, hold a court in each of the counties of this state, for the trial of all issues joined in the supreme court, or in any other court, and brought into the supreme court, to be tried, and which are triable in the respective counties ; which courts shall be called the circuit courts ; and that each of the said courts shall be held so many days as the justices or justice holding the same, shall think necessary.

The supreme court to appoint the circuit courts.

Provido.

II. *And be it further enacted,* That the justices of the supreme court shall appoint the times for holding the circuit courts, but they may nevertheless alter the same from time to time as they shall judge most for the public convenience : *Provided,* That no alteration shall take effect until at least one term of the supreme court, shall have intervened, between the term when the alteration shall have been made, and the time when the first circuit court shall thereafter be held. *And provided further,* That no such circuit court shall be appointed as aforesaid, to be holden in any county at the same time that any other court shall, by appointment of law, be holden in

Further proviso.

the same county, the city and county of New-York excepted; and that the clerks of the supreme court shall forthwith from time to time, cause every rule or order of the supreme court, appointing the times for holding the circuit courts, or for altering the same as the case may be, to be published in at least two of the newspapers printed in the cities of New-York and Albany.

Clerks to give notice of the appointment of circuit courts.

III. *And be it further enacted*, That the said circuit courts shall be held at the court houses of the counties in which they are respectively appointed to be held; and in case there be no court house in such county, then at such place as the justices of the supreme court during the term next preceding the holding of such circuit court, shall for that purpose appoint; *Except nevertheless*, That in the cities and counties of New-York and Albany, the said circuit courts may be held at such place within the same, as the said justices at the next preceding term shall direct.

The place of holding circuit courts.

IV. *And be it further enacted*, That the said justices of the supreme court, and every of them, as justices of the supreme court, and without any other commission, shall be and heroby are authorized and required, at the said circuit courts, to try all such issues, and take all such inquiries by default or otherwise, as are or ought to be tried or taken, in the said circuit courts respectively; and to record nonsuits and defaults, before them: and upon the return of the proceedings in the said circuit courts into the supreme court, the said supreme court shall receive and record the same, and give judgment or make order thereupon according to law.

The powers of the circuit courts.

Proceedings thereon in the supreme court.

V. *And be it further enacted*, That the chief justice of the supreme court, or in his absence or default, any other judge of the said court, may at his discretion, by virtue of this act, and without any other commission for the purpose, in term time, or within twenty days after the end of any term, in the city hall of the city of New-York, or in the city hall of the city of Albany, on such days as the court shall appoint for the purpose, try all manner of issues joined in the said court, or brought into the said court to be tried, which by the ordinary course of law ought to be tried in the said court by jury, upon the like process and proceedings, and in like manner, and with the like powers, as trials are had in the like cases at the said circuit courts, in and for the city and county of New-York, or city and county of Albany; and that the clerk of the supreme court at Albany, shall be considered as clerk of the said sittings, in the city of Albany, and the same sittings may be continued from day to day, Sunday excepted, for as many days as the judge holding the same shall think necessary. *Provided always*, That the times of the said sittings in any term, shall always be appointed in the next preceding term, and the

The sittings.

The clerk of the sittings at Albany.

The time of appointing sittings.

times of the said sittings after any term, shall always be appointed in the next preceding term but one.

Circuit courts and courts of oyer and terminer to be adjourned, and by whom, in the absence of a judge of the supreme court.

VI. *And be it further enacted*, That if it shall happen in any county, that one of the justices of the supreme court shall not come to the place, where the circuit court is appointed to be held, by the hour of six in the afternoon of the day for holding the court, the sheriff shall then open, and shall adjourn the circuit court, and also the court of oyer and terminer and gaol delivery, which shall be to be held at the same time and place, until the hour of nine in the forenoon of the next day; and if one of the justices of the supreme court, shall come to the place at any time, before the hour of six in the afternoon of that day, it shall be lawful for him in respect to the circuit court, and for a quorum of the commissioners in respect to the court of oyer and terminer and gaol delivery, or any justice thereof, to open the said courts, and hold the same in like manner and to every intent, as if the said courts had respectively been duly opened on the first day and adjourned to the next day by the said justice, or by a quorum of the commissioners; and the proceedings on the record may be in the same form as if the said justice and the said quorum of the commissioners had been present and opened the said courts on the first day. If however a justice of the supreme court shall not so come on the second day, all persons bound by recognizance to appear at the court of oyer and terminer and gaol delivery, shall be adjudged to be bound by such recognizance to appear at the next court of oyer and terminer and gaol delivery which shall be held in such county, notwithstanding such opening of the said court, and the adjournment of the same by the sheriff as above mentioned. *And further*, That whenever such case shall happen, the justices of the supreme court, shall in the next term thereafter, appoint a circuit court to be held in every such county in the ensuing vacation.

Persons bound by recognizance in such cases to appear at the next court.

A new circuit to be appointed in the place of the one that failed.

A judge not present at the opening of a circuit court or sittings may hold the same.

VII. *And be it further enacted*, That any justice of the said supreme court, although not present at the commencement of any circuit court, or sittings, may hold and continue the same, in the absence of the judge who was present at the commencement of the same court; and do and execute every thing therein, as fully in every respect, as if he had been present at the commencement thereof.

Clerks of the counties to be the clerks of the circuit courts and courts of oyer and terminer, *ex-officio*.

VIII. *And be it further enacted*, That the clerks of the several counties, the city and county of New-York excepted, shall be *ex-officio* clerks of the circuit courts, and courts of oyer and terminer and gaol delivery, within their said counties respectively.

In New-York a clerk to be appointed for the said courts.

IX. *And be it further enacted*, That the clerkship of the circuit court, and of the sittings, and court of oyer and terminer and gaol delivery, within the city and county of New-York, shall be united in, held and exercised by, the

same person, and that such clerk shall be appointed by the person administering the government of this state, by and with the advice and consent of the council of appointment.

X. *And be it further enacted,* That the justices of the supreme court, or either of them, together with the mayor, recorder and aldermen of the city of New-York, or any three or more of them, of whom either of the justices of the supreme court shall always be one, in and for the city and county of New-York, and together with the mayor, recorder and aldermen of the city of Albany, and the judges and assistant justices of the court of common pleas for the county of Albany, or any three or more of them, of whom either of the justices of the supreme court shall always be one, in and for the city and county of Albany, and together with the judges and assistant justices of the respective courts of common pleas of each of the other counties of this state, or any three or more of them, of whom either of the justices of the supreme court, shall always be one, in and for each of the same counties respectively, shall be, and hereby are authorized, and empowered, by virtue of their respective offices, and this act, without any other commission, at such times and places, in each of the said cities and counties respectively, as the said justices of the supreme court, or either of them, shall hold the circuit court therein, and at such other times and places, in each of the said cities and counties, as any three of the justices of the supreme court, or any one of them, with any two of the said persons within their respective cities and counties, shall for that purpose appoint; to enquire by the oath of good and lawful men, of the same cities and counties respectively, and by other ways, and means, by whom and by which, the truth of the matter may be the better known, of whatsoever treasons, felonies, and other crimes and misdemeanors, and of the accessories to them, in the same cities and counties respectively, by whom, and in what manner soever done or committed, and of every circumstance concerning the same; and the said treasons, felonies, and other crimes and misdemeanors, to hear and determine; and also to deliver the gaols in the same cities and counties respectively, of the prisoners therein according to law. *And further,* That the said courts shall be held and continue, with or without such circuit court, in each of the said cities and counties, for so long time, as may be necessary to dispatch the business in the same.

Courts of oyer and terminer and gaol delivery, when, and by whom, to be held.

Powers of those courts.

How long to continue.

XI. *And be it further enacted,* That the sheriff of the city and county of New-York, and the sheriffs of each of the other counties in this state, shall cause to come before the said courts of oyer and terminer and gaol delivery, to be held therein, twenty-four good and lawful men of the same city and counties respectively, to enquire for the

Sheriffs to return at such courts,

Grand Jurors,

And petit
jurors.

And to pro-
claim the
court, and
notify pro-
secutors, and
officers to at-
tend.

Sheriffs and
their officers
to attend.

District attor-
neys to issue
precepts.

Tests of such
precept.

Special com-
missions of
oyer and ter-
miner and
gaol delivery
may be issued.

people of the state of New-York, and the bodies of the same city and counties respectively, and to do and receive all those things, which on the behalf of the people of the state of New-York shall be then and there enjoined them; and also all the prisoners then being in the gaols thereof, together with their attachments, indictments and all other minuments, any ways concerning those prisoners; and likewise so many good and lawful men of the same city and counties respectively, duly qualified to serve as jurors therein, as the said courts of oyer and terminer and gaol delivery, or any justice thereof, shall from time to time direct, by whom the truth of the matter may be the better known, and enquired into, and who have no affinity to those prisoners. And the said respective sheriffs shall cause to be publicly proclaimed throughout their respective counties, that all those who will prosecute against those prisoners, be then and there to prosecute against them as shall be just; and shall also give notice to all justices of the peace, coroners, bailiffs, and constables within their respective counties, that they be then and there in their own persons, with their rolls, records, indictments, and other remembrances, to do those things, which to their offices in that behalf shall appertain to be done. And the said respective sheriffs and their officers shall then and there attend in their own proper persons, to do those things which to their offices shall appertain. *And further,* That the district attorneys shall from time to time as soon as conveniently may be, after every circuit court shall be appointed to be held, in the cities and counties of this state, within their respective districts, and at least fifteen days before the time of holding the same, issue precepts under the seal of the supreme court, directed to the respective sheriffs of the same cities and counties, for the purposes aforesaid, mentioning the day and place, when and where, the said courts are to be held, and commanding the said sheriffs respectively, to do what is hereby required of them, and that the said precepts shall always be in the name of the people of the state of New-York, and be tested in the name of the chief justice of the said supreme court. *Provided,* That in case the office of chief justice shall be vacant, the precepts shall be tested in the name of the next senior justice of the said supreme court, and the said precepts may be tested on any day of the term preceding the vacation in which the court is to be held.

XII. *And be it further enacted,* That it shall be lawful for the person administering the government of this state, by and with the advice and consent of the council of appointment, to grant and issue commissions of oyer and terminer and gaol delivery, or either of them, in the manner and form heretofore used, at any time hereafter when and as often as occasions require: But the justices

of the supreme court shall always be named in such commissions, as the justices or commissioners, with such others as the person administering the government of this state, by and with the advice and consent of the council of appointment, may think proper to execute the same; and no such commission shall at any time be executed, nor any proceedings thereupon had, without the presence of one or more of the justices of the supreme court.

Judges of the supreme court to be named in such commissions.

XIII. *And be it further enacted,* That it shall and may be lawful for the said courts of oyer and terminer, to direct their writs into all the cities and counties of this state, where need shall be, to arrest and take such persons, as shall be indicted before them.

Courts of oyer and terminer may direct their process into any county.

XIV. *And be it further enacted,* That no manner of process or suit, before any justices of gaol delivery, oyer and terminer, or other commissioners of the people of this state, shall in any wise be discontinued, by the making and publishing of any new commission, or by altering the names of the justices of gaol delivery, and oyer and terminer, or other commissioners; but that the new justices of gaol delivery, oyer and terminer, and other commissioners, shall and may proceed in every behalf, as the old justices and commissioners might have done, if their commissions and authority had still remained.

No process or suit to be discontinued by a new commission.

XV. *And be it further enacted,* That in all cases where any person shall be found guilty of any crime punishable with death, and be reprieved before judgment, any court of gaol delivery, thereafter to be held by virtue of this act, in such city or county where such person so found guilty shall remain, shall have power to give judgment of death against such person, as the same court before whom such person was found guilty might have done, if their authority had continued in full force.

Courts of gaol delivery to give judgment against persons convicted of any capital crime before any other court.

XVI. *And be it further enacted,* That the courts of general sessions of the peace, shall send their indictments against prisoners in gaol, to the said courts of oyer and terminer and gaol delivery, within their respective cities and counties; and the said courts shall have power to try all indictments so received, and also such other indictments found in any court of general sessions of the peace, which may, in the opinion of the said courts of oyer and terminer, be proper to be tried in the same courts; and to deliver the gaols of those prisoners who shall be indicted before the said general sessions of the peace, within the same cities and counties respectively.

Sessions to send indictments to the courts of oyer and terminer and gaol delivery;

Who are to proceed thereon.

XVII. *And be it further enacted,* That the minute books, which may hereafter be requisite for the clerks of the courts of oyer and terminer and gaol delivery, shall be provided for the purpose, at the expence of the counties respectively.

Minute books of the clerks of oyer and terminer, to be at the expence of the counties.

Justices of the
peace excused
from attend-
ing courts of
oyer and ter-
miner and
gaol delivery.

XVIII. *And be it further enacted,* That no justice of the peace shall by virtue of his office, be liable to any penalty for not attending any court of oyer and terminer or gaol delivery, unless the duties of his office require him to attend such courts.

C H A P. IX.

An ACT to reduce the Laws concerning Wills into one Statute.

Passed 20th February, 1801.

Land may be
devised,

I. **B**E it enacted by the People of the State of New-York, represented in Senate and Assembly, That any person having any estate of inheritance, either in severalty, in coparcenary or in common, in any lands, tenements or hereditaments, may at his own free will and pleasure, give, or devise the same, or any of them, or any rent or profit out of the same, or out of any part thereof, to any person or persons, (except bodies politic and corporate) by his last will and testament, or by any other act by him lawfully executed.

Except to cor-
porations.

How wills of
land are to be
executed,

II. *And be it further enacted,* That every such last will and testament shall be in writing, and signed by the party making the same, or by some other person in his presence, and by his express direction; and shall be attested and subscribed in the presence of such party, by three or more credible witnesses, or else such last will and testament shall be utterly void.

Or revoked.

III. *And be it further enacted,* That no such last will and testament duly executed as aforesaid, or any part thereof, shall be revocable, or be altered, otherwise than by some other will or codicil in writing, or other writing of the party, to such last will and testament, declaring the same, and signed, attested and subscribed in manner aforesaid, or by burning, cancelling, tearing or obliterating such last will and testament, by the testator himself, or in his presence and by his direction and consent.

Estates *pur
auter vie* de-
visable.

IV. *And be it further enacted,* That all estates *pur auter vie*, shall be devisable by last will and testament duly executed as aforesaid; and if no such devise thereof be made, the same or so much thereof as shall not be devised, shall go to the executor or administrator of the party who had the estate, to be applied and distributed as part of the personal estate.

Persons inca-
pable of devi-
sing.

V. *And be it further enacted,* That no last will and testament aforesaid made by a married woman, or by any infant, idiot, or person of insane memory shall be valid in law.

Wills con-
cerning land,

VI. *And be it further enacted,* That where any real estate shall be devised by last will and testament as aforesaid, the

executors to such will, or any person interested in such estate, may cause the said will to be brought before the court of common pleas of the county in which such real estate may be; and the said court shall cause the witnesses to such will to be examined in open court, or if it shall appear to the court, at the examination of any witness to such will, that the other witness or witnesses to the said will, are dead, or reside out of this state, then such proof shall be taken in open court of the hand writing of the testator, or of the witness or witnesses, so dead or absent, or of such other circumstances, as would be proper to prove the said will upon a trial at law: and the said court shall cause all such examinations and proofs to be reduced to writing; and if it shall thereupon, in either case, appear that such will was duly executed, and that the testator at the time of executing the same was of full age, and of sound mind and memory, and not under any restraint, then the court shall order their clerk to record the same will, together with the proof so taken in a book to be provided by the clerk for that purpose: and the record of the said will so proved and recorded, shall be as good and effectual in all cases, as the original wills would be if produced and proved.

how to be proved in the courts of common pleas:

Effect of such proof.

VII. *And be it further enacted*, That if all the witnesses to such will are dead, or reside out of the United States, then the said court shall in open court take such proof of the hand writing of the testator, or of either or all of the witnesses to the same will, or of such other circumstances as would be proper to prove the same will upon a trial at law; and shall cause all such examinations and proofs to be reduced to writing, and to be recorded as aforesaid; and the record thereof shall be received as evidence upon any trial or controversy concerning the same will, and shall be of the same force and effect as if taken in open court upon such trial: *Provided*, it shall appear that the lands in question, have been uninterruptedly held, under the said will for the space of twenty years. And the same will shall be deposited and remain with the clerk of the same court for the benefit of the parties interested therein, and he shall upon request make and deliver a true copy thereof to any person requiring the same: *Provided also*, That if it shall appear upon such examination that any lands claimed under the said will, have been held under the same for twenty years previous thereto, such will shall also be recorded as aforesaid, and such record shall be evidence in all cases respecting such lands.

Proof thereof if the witnesses be dead or absent from the U. States:

Effect of such proof.

Proviso.

Further proviso.

VIII. *And be it further enacted*, That it shall not be lawful for the said court to proceed to prove any such will, until proof be made, that due notice of such intention had been given to the heirs of the testator, or if such heirs are not to be found within this state, fixed up at the last place of abode of such testator, at least fifteen days before

Notice of application to prove wills.

Witnesses
compelled to
attend;

such examination. That the said court or any judge thereof, may cause all such witnesses as any person interested may desire, to be summoned to appear at such court and testify; and if any witness neglects or refuses to appear, the said court may cause such witness to be brought before the same court to testify touching the premises. And that every person having the custody or power of any such will, shall on request produce the same before the said court, for the purpose aforesaid; and when the same shall be proved, and shall also be recorded as aforesaid, the original shall be returned to the person who brought it, if such person desire it; and if any such person refuse to produce and deliver such will, the said court may commit such person to gaol, there to remain, until he produces and delivers the same to such court or a judge thereof.

And to pro-
duce wills.

When wills to
be proved in
supreme court

IX. *And be it further enacted,* That if the real estate so devised be in several counties, then such will shall be proved in manner aforesaid in the supreme court, and recorded as aforesaid by the clerk thereof; and the supreme court shall in such cases proceed in the like manner, and have like powers in the premises.

Expences of
such proof,
and by whom
paid.

X. *And be it further enacted,* That the expence of proving and recording the said wills, shall be paid by the person applying to have the same done, and the witnesses and officers shall have the like fees for their attendance, and services on proving a will as aforesaid, as for the like attendance and services in other cases.

Power to
executors to
sell land valid
in those who
qualify.

XI. *And be it further enacted,* That where any lands, tenements or hereditaments have been, or shall be given, or devised by any last will and testament, executed as aforesaid, to the executors therein named, or any of them to be sold, or have been or shall be thereby ordered to be sold, by such executors or any of them, and after the death of the testator part of the executors so named, refuse or neglect to take upon them the execution of the said will, then all sales of the said lands, tenements or hereditaments, by the executor or executors, who take charge of the administration of the said will, shall be equally valid, as if the residue of the executors had joined in the sale.

Devises to
witnesses
void.

XII. *And be it further enacted,* That if any person be a witness to the execution of any will, to whom any beneficial devise, legacy, interest, or appointment affecting any real or personal estate, except charges on the real estate, for the payment of any debt, be given, or made, such devise, legacy, interest, or appointment, shall so far only as concerns such person, or any claiming under him be void, and such person shall be admitted as a competent witness.

Creditors
good witnesses

XIII. *And be it further enacted,* That if by any will, any real estate be charged with any debt, and any creditor, whose debt is so charged, be a witness to such will, he

shall notwithstanding the charge, be a competent witness. *Provided always,* That the credit of any witness to a will, in any of the cases in this act before mentioned, shall be subject to consideration and determination, in like manner as the credit of witnesses is in all other cases. *Provide.*

XIV. *And be it further enacted,* That no nuncupative will shall be good where the estate thereby bequeathed shall exceed the value of seventy-five dollars, unless the same be proved by the oaths of three witnesses at the least, who were present at the making thereof, nor unless it be proved, that the testator at the time of pronouncing the same, did bid the persons present or some of them bear witness that such was his will, or words to that effect, nor unless such nuncupative will was made in the time of the last sickness of the deceased, and in his dwelling house, or where he had been resident for ten days, or more, next before the making of such will, except where such person was surprised, or taken sick, being from home, and died before his return to the same. *Nuncupative wills how to be made and proved:*

XV. *And be it further enacted,* That after six months from the speaking of the pretended testamentary words, no testimony shall be received to prove any nuncupative will, except the said testimony, or the substance thereof, was committed to writing, within six days after the making of the said will; and further, that no letters testamentary, or probate of any nuncupative will, shall pass the seal of any court, until fourteen days at the least, after the decease of the testator, shall be fully expired; nor shall any nuncupative will be at any time received to be proved, unless process hath first issued, to call in the widow, or next of kin to the deceased, to the end they may contest the same if they please. *Limitation to proof thereof.*

XVI. *And be it further enacted,* That every person may by will in writing give or bequeath his personal estate in the same manner as if this act had not been passed. And no will in writing concerning any personal estate shall be repealed, or any part thereof revoked or altered, by any words or will, by word of mouth only, unless the same be in the life time of the testator committed to writing, and after the writing thereof read unto the testator, and allowed and approved of by him, and proved so to be done by three witnesses at the least. *Wills of chattels, when good.*

XVII. *And be it further enacted,* That widows may bequeath the crop in the ground, of their lands holden in dower, and that any soldier being in actual military service, and any mariner being at sea, may dispose of his personal estate in the same manner as if this act had not been passed. *How revocable:*

XVIII. *And be it further enacted,* That when any person hath any child under the age of twenty-one years, and not married at the time of his death, it shall and may be *Such wills by widows, soldiers, & mariners, when good.*

Guardian by deed or will, how appointed:

lawful to and for the father of such child, whether born at the time of the decease of the father, or at the time in *ventre sa mere*, or whether such father be within the age of twenty-one years, or of full age, by his deed executed in his life time, or by his last will and testament in writing, signed by such father, or by some other person in his presence, and by his express direction, and attested and subscribed in the presence of such father, by three or more credible witnesses, in such manner and form, and from time to time, as he shall respectively think fit, to dispose of the custody and tuition of such child, for and during such time, as he or she shall respectively remain under the age of twenty-one years, or any less time, to any person or persons in possession or remainder; and that such disposition of the custody of such child, shall be good and effectual, against every person claiming the custody or tuition of such child, as guardian in socage, or otherwise; and that such person or persons, to whom the custody of such child be so disposed, or devised as aforesaid, may maintain an action of ravishment of ward, or trespass against any person, who shall wrongfully take away, or detain such child, for the recovery of the same, and shall and may recover damages in the said action for the use and benefit of such child.

Their powers.

Further powers.

XIX. *And be it further enacted*, That any person to whom the custody, of any child is so disposed, or devised, may take into his custody to the use of such child, the profits of the real estate of such child, and also the tuition of the child, and the custody and management of his personal estate, until such child arrives to the age of twenty-one years, or any less time, according to such disposition aforesaid, and may bring such actions in relation thereunto as a guardian in socage might lawfully do.

Codicils within this act.

XX. *And be it further enacted*, That every provision in this act shall apply as well to codicils as to wills.

C H A P. X.

An ACT concerning the Court for the Trial of Impeachments, and the Correction of Errors.

Passed 20th February, 1801.

Organisation of the said court.

I. **B**E it enacted by the People of the State of New-York, represented in Senate and Assembly, That the court for the trial of impeachments and the correction of errors, shall consist of the president of the senate, the senators, chancellor, and judges of the supreme court, or the major part of them, who shall and may hold such court, at any time during the sitting of the legislature, on such days, and at such places as they shall from time to time appoint.

II. *And be it further enacted*, That the seal already provided for that purpose, shall be the seal of the said court, and the description thereof deposited and recorded in the office of the secretary of this state, shall there remain as a public record thereof.

Seal of said court.

III. *And be it further enacted*, That the person administering the government of this state, by and with the advice and consent of the council of appointment, shall, as often as may be necessary, appoint a fit person to be the clerk of the said court, who shall hold his office during the pleasure of the said council. And all writs and process issuing out of the said court, shall run in the name of the people of this state, and be tested in the name of the president of the senate, and signed by the said clerk.

Clerk thereof.

The process.

IV. *And be it further enacted*, That all impeachments shall be delivered to the president of the senate, who shall thereupon immediately cause the said court to be summoned, and the said court shall forthwith cause the person so impeached, to appear or be brought before them, to answer the charge exhibited against him ; and upon the appearance of such person, he shall be entitled to have a copy of the said impeachment, and a reasonable time to plead or answer the same. And when issue shall be joined upon such impeachment, the court shall appoint a time and place for the trial thereof ; and at the time and place so appointed, and before they proceed upon the trial, the president of the senate shall administer to each of the members of the said court then present, and the clerk of the said court shall at the same time also administer to the president, an oath or affirmation, as the case may require, truly and impartially to try and determine the charge in question, according to evidence ; and the said court shall then proceed to hear, try and determine the same ; and may from time to time, if necessary, adjourn the said trial to any other time or place ; and no member of the said court shall sit, or give his vote upon such trial, until he shall have taken the oath or affirmation aforesaid, before the president of the senate : *Provided always*, That no judgment or sentence of conviction, shall be given against any person upon any impeachment, unless two third parts of the members of the said court then present, shall assent to such judgment or sentence ; and if two third parts of the members then present, shall not assent to a judgment or sentence of conviction, then the person so impeached, shall be considered as acquitted from such impeachment ; and no judgment or sentence of conviction, upon any such impeachment, shall extend further than to removal from office, and disqualification to hold or enjoy any place of honor, trust or profit under this state ; but the party so convicted or acquitted, shall nevertheless be subject to indictment, trial, judgment and punishment, according to the laws of the land.

Proceedings on impeachment.

Provido.

Judgment on conviction.

Power of impeachment vested in the assembly.

Officer impeached, suspended from office.

Proceedings on error from the supreme court.

V. *And be it further enacted*, That the power of impeaching all officers of the state, for mal and corrupt conduct in their respective offices, be vested in the representatives of the people in assembly : But that it shall always be necessary, that two third parts of the members present, shall consent to and agree in such impeachment.

VI. *And be it further enacted*, That when any officer shall be so impeached, he shall be, and hereby is, suspended from exercising his office until his acquittal ; And if the president of the senate should at any time be so impeached, notice thereof shall be immediately given by the assembly to the senate, that another president may be appointed.

VII. *And be it further enacted*, That all errors happening in the court of chancery, the supreme court, or court of probates, shall be redressed and corrected by the said court for the trial of impeachments and the correction of errors ; and that it shall and may be lawful, as well for the attorney general, in behalf of the people of this state, as for any party against whom any judgment hath been or may hereafter be given in the same supreme court, or the representatives of such party, who may be thereby aggrieved, to sue forth out of the court of chancery, a writ of error to be directed to the judges of the supreme court, commanding them to cause the record of such judgment, and all things concerning the same, to be brought before the president of the senate, and the senators and chancellor : which writ of error, if issued during the sitting of the legislature, shall be made returnable at the place where the senate shall then sit, without delay, but if issued during the recess of the legislature, shall be made returnable at the next meeting of the senate, wheresoever the same shall be. And the party prosecuting such writ of error shall, without delay, cause a transcript of the said record to be made, and the said judges to whom such writ of error may be directed, or any one of them, shall within fifteen days after notice of the said writ of error, if the same be returnable without delay, or if otherwise, at the day of the return thereof, annex the said transcript to the said writ of error, and endorse a proper return upon the said writ, and return the same. And the said court for the trial of impeachments and the correction of errors, shall have full power, and hereby are authorized and required, to examine all such errors as shall be assigned or found in such record, or in any process or proceeding concerning the same, and to call upon the judges of the supreme court to assign the reasons of such judgment, and thereupon to reverse, or affirm the said judgment, and to give such other judgment therein as the law shall require. And shall then cause the said transcript of the record, with

their judgment thereon, and all things touching the same, to be remitted into the supreme court, where such further proceedings shall be thereupon had, as well for execution as otherwise, as may be agreeable to law and justice.

VIII. *And be it further enacted*, That all persons aggrieved by any sentence, judgment, decree or order of the court of chancery, or court of probates, may appeal from the same, or any part thereof, to the said court for the trial of impeachments and the correction of errors; which court, if such appeal be from the court of chancery, shall require the chancellor to assign the reasons of such sentence, judgment, decree or order, and shall have full power to examine, hear and finally determine, all such appeals from the said court of chancery, or court of probates, and all matters concerning the same, and to reverse, affirm or alter any such sentence, judgment, decree or order, and to make such other order or decree thereon, as equity and justice shall require; and thereupon to remit the same, with their judgment, decree and order in the premises, and all things concerning the same, into the court so appealed from, where such further proceedings shall be thereupon had, as well for execution as otherwise, as may be agreeable to equity and justice.

On appeals from chancery and court of probates.

IX. *And be it further enacted*, That all appeals from the said court of chancery, except those from final decrees, and all appeals from the said court of probates, shall be made within fifteen days after making the sentence, judgment, decree or order, appealed from, and all appeals from final decrees in the said court of chancery, and all writs of error upon judgments in the supreme court, shall be brought within five years, after making such decree or rendering such judgment, and not after.

Time limited for bringing writs of error and appeals.

X. *And be it further enacted*, That if at the return of any writ of error, or at the time of entering any such appeal in the said court for the trial of impeachments and the correction of errors, or at any other time, to which the same or the proceedings thereon shall be adjourned or continued, there should not be a sufficient number of members present to proceed thereon, the said writ of error shall not be thereby abated, or the said appeal, or any of the said proceedings, be discontinued, but the members of the said court then present shall adjourn or continue the same to some further day.

Proceedings how to be continued, when a quorum of the court does not meet.

XI. *And be it further enacted*, That all questions arising upon such writs of error and appeals, in the said court for the trial of impeachments and the correction of errors, shall be determined by a majority of the members present; and if such members be equally divided

Questions on writs of error and appeals, how to be determined

in opinion, the president of the senate shall have a casting voice in the decision, but shall not vote in any other case.

C H A P. XI.

An ACT concerning Apprentices and Servants.

Passed 20th February, 1801.

No apprentice or journeyman to be laid under certain restrictions :

Under a penalty.

Persons how bound by indenture.

proviso.

Further proviso.

I. *BE it enacted by the People of the State of New-York, represented in Senate and Assembly,* That no person whatsoever shall cause any apprentice or journeyman to be bound by oath, bond or otherwise, that after his or her apprenticeship or term expired, such apprentice or journeyman shall not set up or occupy any shop, house or cellar, and therein use his profession, trade or employment ; nor by any means exact or take of any such apprentice or any journeyman, nor of any other person setting up, occupying or using for him or them, after his or their apprenticeship or term expired, any money or other thing, for using the same, upon pain to forfeit for every offence one hundred dollars ; the one half thereof to the people of this state, and the other half to any person who will sue for the same, to be recovered with costs of suit, by action of debt, or by information, in any court of record having cognizance thereof, and every bond or other security given contrary to this act shall be void.

II. *And be it further enacted,* That every person, bound by indenture of his or her own free will, and with the consent of his or her father, or if he be dead, of the mother or guardian, and to be expressed in such indenture, and signified by such parent or guardian, sealing and signing the same indenture, and not otherwise, or by the justices and overseers of the poor, as is herein after directed, to serve as clerk, apprentice or servant, in any profession, trade or employment, until the age of twenty-one years, or for any shorter time, although such clerk, apprentice or servant, shall be within the age of twenty-one years at the making of such indenture, shall be bounden to serve for the term in the indenture specified, as fully as if the same clerk, apprentice or servant, was of full age at the making of the same. *Provided always,* That any child of any Indian woman shall not be so bound except in the presence and with the consent of a justice of the peace ; a certificate of such consent being also signed by the justice, and filed with the clerk of the town in which such indenture shall be executed. *And provided further,* That it shall be lawful for any male infant, under the age of twenty-one years, or any female infant, under the age of eighteen years, and who shall have no

parent living, nor any guardian, by and with the approbation of the overseers of the poor of the town, or of any two justices of the peace, or of any judge of the court of common pleas of the county where such infant shall reside, to bind himself or herself an apprentice as aforesaid, until such infant, if a male, shall arrive to the age of twenty-one years, and if a female, to the age of eighteen years; which approbation shall be indorsed on the indenture, and every such indenture shall be valid and binding.

III. *And be it further enacted*, That when the father of any child is not in legal capacity to give the consent aforesaid, the mother of such child shall have the same power to give such consent as if the father was dead; and whenever it shall be proved to the satisfaction of the overseers of the poor of any of the towns, or of a judge of the court of common pleas of the counties, of Suffolk and Queens, that the husband of any Indian woman residing therein, has left her with her children, it shall then be lawful for such woman to bind her children as aforesaid, in the same manner as if her husband was dead.

Mother's consent, when sufficient.

IV. *And be it further enacted*, That it shall be lawful for the overseers of the poor of any city or town within this state, by and with the consent of the justices of the peace of the same county, or any two of them, residing in or near such town, or in the cities of New-York, Albany and Hudson, by and with the consent of the mayor, recorder and aldermen, or any two of them, or in the city of Schenectady, by and with the consent of the mayor and aldermen, or any two of them, to bind out any child who is or shall be chargeable, or whose parents are or shall become chargeable, to the city or town wherein they respectively inhabit, or who shall beg for alms, to be apprentices or servants according to their degree and ability, where they shall see convenient, until such child or children, if male, shall respectively arrive or come to the age of twenty-one years, and if female, to the age of eighteen years; and that the indentures or articles of agreement for binding any such infant, shall be as effectual, to all intents and purposes, as if such infant were of full age, and by indenture of covenant bound him or herself: And the counterpart of such indenture or articles for the benefit of the person so bound, shall be deposited with the clerk of the city or town in which such binding shall take place, for safe keeping.

Poor children how to be bound:

V. *And be it further enacted*, That in all indentures and contracts to be made by any overseers of the poor of any city or town, by and with the consent of the justices of the peace of the county, or any two of them, or by and with the consent of the mayor, recorder and aldermen, or any two of them, in any city, for binding or putting out any child as an apprentice or servant, shall, among the

Covenants in their indentures:

covenants in such indentures or contracts to be made and agreed upon between the parties, always be inserted a clause to the following effect; that every master or mistress to whom such child shall be bound as aforesaid, shall cause such child to be taught and instructed to read and write, and shall also give unto such child a new bible at the expiration of his or her term of service. *And further,* That the overseers of the poor of each respective city and town, shall be the guardians of every such child so put and bound out as aforesaid, to take care that the terms of the indentures or contract, and the agreements therein contained, be fulfilled, and that such child be not ill used; and the said overseers of the poor are hereby directed to inquire into the same, and to redress any grievance in such manner as is prescribed by law.

Overseers of the poor made their guardians.

Persons bound as aforesaid, and refusing to serve, how to be dealt with.

VI. *And be it further enacted,* That if any person who shall be bound as aforesaid, shall refuse to serve as an apprentice or servant, according to the terms of the indenture made as aforesaid, then, upon complaint of the master or mistress, to whom such apprentice or servant shall be so bound, to any justice of the peace of the county wherein the said refusal shall be made, or to the mayor or recorder, or any one of the aldermen of any city, if any such refusal shall be in such city, they and each of them shall have full power and authority by this act, by warrant under hand and seal, or otherwise to send for the same person so refusing, and if the said person refuse to serve as an apprentice or servant, to commit him or her unto ward in the bridewell or house of correction, if any there be, or if there be no bridewell or house of correction, in the gaol of the city or county wherein such refusal shall take place, there to remain until he or she be contented, and will serve as an apprentice or servant, according to the intent and meaning of this act. And to the end, that the time of the continuance of the service of such apprentice or servant, may the more plainly and certainly appear, the age of every such infant so to be bound apprentice or servant, shall be inserted in his or her indentures; and where the binding is by the overseers of the poor, by and with the consent of two justices of the peace, or mayor, recorder and aldermen as aforesaid, the same justices of the peace, or mayor, recorder and aldermen shall as fully as they can, inform themselves of such infant's age, and from such information shall insert the same in the said indentures; and the age of such infant, so inserted in the said indentures (in relation to the continuance of his or her service) shall be taken to be his or her true age, without any further proof thereof.

Age of every infant so bound, to be inserted in the indenture.

Money paid or agreed on, in relation to every clerk or apprentice, to

VII. *And be it further enacted,* That every sum of money which shall be paid or agreed for, with or in relation to every clerk or apprentice so to be bound out as aforesaid, to learn any profession, trade or employment,

shall be inserted in the indentures to be executed as
afore said ; and every indenture or contract for taking of
any clerk or apprentice, other than is by this act regu-
lated, shall be void as against such clerk or apprentice
only : *Provided always*, That no deed or contract for
binding any person as clerk, apprentice or servant as
afore said, shall be void for not being indented only.

be inserted in
the indenture.

Provida.

VIII. *And be it further enacted*, That every contract
already made, or hereafter to be made, by any infant or
other person coming from beyond sea, executed in the
presence of two witnesses, and acknowledged by the ser-
vant, before any mayor, recorder, alderman or justice of
the peace, shall bind the party entering into the same,
for such term and for such services as shall be therein
specified ; and that every assignment of the same, execu-
ted before two credible subscribing witnesses, shall be ef-
fectual to transfer the same contract for the residue of
the term therein mentioned : But that no contract shall
bind any infant longer than until his or her arrival to the
full age of twenty-one years ; excepting such as are or
shall be bound in order to raise money for the payment
of their passages, who may be bound until the age of
twenty-four years ; *Provided*, The term of such service
shall not exceed four years in the whole.

Contracts of
service, by in-
fants or other
persons com-
ing from be-
yond sea.

Provida.

IX. *And be it further enacted*, That if any master or mis-
tress shall be guilty of any misusage, refusal of necessary pro-
visions or cloathing, cruelty, or other ill treatment, so that
his or her said clerk, apprentice or servant, shall have any
just cause to complain, or the said clerk, apprentice or
servant be guilty of any misdemeanor, miscarriage or ill
behaviour, or do not perform his or her duty to his or her
master or mistress, then the said master or mistress, or
the said clerk, apprentice or servant being aggrieved, and
having just cause of complaint, shall repair to any justice
of the peace within the county, or to the mayor or record-
er, or any one of the aldermen of the city, where the said
master or mistress dwelleth, who shall take such order and
direction between the said master or mistress and his or
her clerk, apprentice or servant, as the equity of the
case shall require. And if the said justice of the peace, or
mayor, recorder or alderman, cannot compound or agree
the matter between such master or mistress and his or her
clerk, apprentice or servant, then the said justice, or the
said mayor, or recorder or alderman, shall take a recogni-
zance of the said master or mistress, in such sum as he shall
think proper, to appear at the next general sessions of the
peace, to be holden in the said city or county, and upon
his or her appearance and hearing of the matter before the
said court of general sessions of the peace, the said court
may, in their discretion, by rule or order, discharge the
said clerk, apprentice or servant of his or her clerkship,

Grievances of
the master or
apprentice,
how to be re-
dressed at the
sessions.

apprenticeship or service, and order all such part of such sum and sums of money as shall have been paid or agreed for, with or in relation to every such clerk, apprentice or servant, as they shall judge proper, to be refunded to the person who paid the same, his or her executors or administrators : And that such order so entered in the minutes of the said court, shall be a sufficient discharge for the said clerk, apprentice or servant from his or her indenture : And if the default shall be found to be in the clerk, apprentice or servant, then the said justices shall cause such punishment, by fine or imprisonment, or both, as for a misdemeanor, to be inflicted upon him or her, as by them shall be thought meet.

Apprentices
and servants,
in certain
cases, dis-
charged by three
justices, on be-
ing aggrieved;

X. *And be it further enacted*, That it shall be lawful for any three or more justices in any county, or for the mayor, recorder and aldermen of any city, or any three or more of them, upon any complaint or application, by any apprentice or servant, upon whose binding out no sum of money was paid, touching or concerning any misusage, refusal of necessary provisions or cloathing, cruelty or other ill treatment, of or toward such apprentice or servant, by his or her master or mistress, by precept under their hands and seals, to summon such master or mistress to appear before such justices, or such mayor, recorder and aldermen, or any two or more of them, at a reasonable time and place to be named in such summons ; and such justices, mayor, recorder and aldermen, shall and may examine into the matter of such complaint ; and upon proof thereof, made upon oath, to their satisfaction, (whether the master or mistress be present or not, if service of the summons be also upon oath proved) the said justices, or mayor, recorder and aldermen, may discharge such apprentice or servant, by warrant or certificate under their hands and seals ; for which warrant or certificate no fees shall be paid.

And punished
for miscon-
duct.

XI. *And be it further enacted*, That it shall be lawful for such justices, or mayor, recorder and aldermen, or any two or more of them, upon application or complaint made upon oath, by any master or mistress, against any such apprentice or servant, touching or concerning any misdemeanor, miscarriage or ill behaviour in his or her service, to hear, examine and determine the same, and to punish the offender by commitment to the house of correction, (if any there be, or to the common gaol of the county or city, there to remain at hard labour for a reasonable time, not exceeding one calendar month, or otherwise, by discharging such apprentice or servant, in manner and form before mentioned.

Apprentices
and servants
absenting
themselves, to

XII. *And be it further enacted*, That if any apprentice or servant shall absent himself, from the service of his master or mistress, before the term of his apprenticeship or

service shall be expired, every such apprentice or servant, shall, at any time thereafter, wherever he shall be found, be compelled to serve his said master or mistress for double the time he shall so have absented himself from such service, unless he shall make satisfaction to his master or mistress for the loss he shall have sustained by such absence from his service : And so from time to time, as often as any such apprentice or servant shall, without leave of his master or mistress, absent himself from his service, before the term of his contract shall be fulfilled. *Provided always,* That nothing in the present section of this act, shall extend to an apprentice, whose master or mistress shall have received with such apprentice any sum or sums of money to learn such profession, trade or employment. *And also,* That no apprentice or servant shall be compelled to serve for any time or term, or to make any satisfaction to any master or mistress, after the expiration of three years next after the end of the term for which such apprentice or servant shall have contracted to serve.

serve double time.

Proviso.

Further proviso.

XIII. *And be it further enacted,* That if any person shall think himself aggrieved by such determination, order or warrant of such justice or justices, mayor or recorder and aldermen as aforesaid, (except an order of commitment) such person may appeal to the next general sessions of the peace, to be holden in and for the city or county where such determination or order shall be made, such person giving six days notice of his intention of bringing such appeal, and of the cause and matter thereof, to such justice or justices of the peace, mayor, recorder or aldermen, and the parties concerned, and entering into a recognizance within three days after such notice, before some justice of the peace, or the mayor or recorder, or one of the aldermen for such city or county, with sufficient surety, conditioned to try such appeal at, and abide the order and judgment of, and pay such costs as shall be awarded by the justices, at such general sessions ; which said justices at their said session, upon due proof upon oath of such notice being given, and of entering into such recognizances as aforesaid, shall and are hereby directed to proceed in, and hear, and finally determine the causes and matters of all such appeals, and to give and award such costs, to any of the respective parties, as they in their discretion shall judge proper and reasonable, not exceeding ten dollars : the same to be levied by distress and sale of the goods and chattels of such person against whom such determination shall be made, and that their judgments and orders therein shall be final and conclusive to all parties concerned.

Appeals to the sessions from order of justices.

XIV. *Provided nevertheless, and be it further enacted,* That the executor or executors, who are or shall be by the last will and testament of a father directed to bring up his child or children to some trade or calling, such ex-

Executors, certain cases to bind children.

ecutor or executors are hereby empowered, to bind such child or children by indenture, in like manner as the father might by law have done, if living, any thing in this act to the contrary in any wise notwithstanding.

C H A P XIII.

An ACT to prevent Abuses in suing out Writs of Habeas Corpus and Certiorari.

Passed 24th February, 1801.

No habeas corpus or certiorari to issue till allowed by a judge;

Nor in term time to remove indictments at the instance of defendant, without rule of court:

When delivered to the sessions.

Causes of 250 dolls. & under, not removable by those writs.

Proviso.

Time of delivery of these writs in civil cases.

I. **BE** it enacted by the People of the State of New York, represented in Senate and Assembly, That no writ of *habeas corpus* or *certiorari*, shall issue out of any court, to remove any prisoner out of any gaol, or to remove any suit or action out of any mayor's court or court of common pleas, or any indictment, presentment, inquisition, judgment, order, record, recognizance or other proceeding, out of any other court, or from before any justice or justices of the peace, unless the same be allowed and signed by one of the justices of the court out of which the same shall issue: *And further*, That no *certiorari* at the instance of any party indicted for any misdemeanor, in any court of general sessions of the peace, shall issue during any term of the supreme court to remove such indictment before the trial thereof, unless the same be granted on motion made in open court, and by a rule of the said supreme court; and that every *certiorari*, directed to any court of general sessions of the peace, shall be delivered in open court.

II. *And be it further enacted*, That no personal action depending in any mayor's court or court of common pleas, on any bond or specialty, or for any other cause, where the sum mentioned in the condition of such bond or specialty, with the interest thereof, or the matter or thing in demand, shall not exceed the sum of two hundred and fifty dollars, shall, before judgment, be stayed or removed into the supreme court by any such writ: *Provided however*, That this prohibition shall not extend to any action wherein the people of this state shall be interested, or in which title to lands or tenements shall in any wise come in question, nor to actions of replevin, assault and battery, false imprisonment or slander, nor to any action by or against the mayor, aldermen and commonalty of either of the cities of New-York or Albany, or the mayor, recorder, aldermen and commonalty of the city of Hudson.

III. *And be it further enacted*, That no such writ shall be received by any mayor's court or court of common pleas, to remove any action depending in such court, un-

less the same be delivered before interlocutory or other judgment entered in such action; and in case of an issue to be tried by a jury, before one of the jury summoned to try the same shall be sworn; and if any action shall have been stayed, or removed into the supreme court, by any such writ, and remanded by *procedendo* or otherwise, no such writ shall again be received to stay or remove the same.

No such writ after *procedendo*.

IV. *And be it further enacted*, That every person indicted for any misdemeanor in any court of general sessions of the peace, or against whom any judgment or order of such court, or of any justice or justices of the peace, other than judgments in actions for debts or demands between party and party, shall have been given or made by virtue of any law of this state, for the benefit of any other person, shall on prosecuting such *certiorari*, and before the allowance thereof, enter into recognizance with two sufficient sureties to the people of this state, before one of the justices of the supreme court, or before such court of general sessions of the peace, or any one of the justices thereof, in the sum of one hundred and twenty-five dollars; conditioned, in the case of such indictment, that the person indicted and prosecuting such *certiorari*, shall at the return thereof, appear and plead to the same indictment in the supreme court, and at his or her proper costs and charges cause the issue which shall be joined thereon, or on any plea relating thereto, to be tried at the circuit court to be held in such county, next after such *certiorari* shall be returnable; if it be not in the county where the supreme court shall sit, and if in such county, then at the next term of the said court, or at such other time as the said supreme court shall appoint, and shall give due notice of such trial to the prosecutor or his attorney, and to the attorney-general or district attorney, as the case may require, and shall appear from day to day in the said supreme court, and not depart from the same without being discharged by the said court, and shall pay to the prosecutor the costs, if any, which shall be ordered by the supreme court in pursuance of this act; and conditioned, in the case of any such judgment or order, that such person shall at his or her proper costs and charges prosecute such *certiorari* to effect, without any wilful delay, and perform such judgment or order, as the said supreme court shall make in the premises, and pay the party for whose benefit the judgment or order so removed was made, if the same shall be confirmed, such costs and charges as shall be directed by the said court. *And further*, That every such recognizance shall be delivered, together with the writ of *certiorari*, to the justice, justices or court to whom the said writ shall be directed, and be certified, together with such writ, into the supreme court, and there filed, and in

Recognizance on *certiorari*, when required and how taken;

In case of indictments;

In case of judgments and orders.

Recognizance how disposed of.

When holden for co's, or the performance of the judgment or order.

case of such indictment, the name of the prosecutor, if a civil officer, or the party grieved, shall be indorsed thereon; and if the person indicted, shall be convicted of the offence charged in such indictment, and the prosecutor be a civil officer, prosecuting on account of any matter relating to his office, or the party grieved, the supreme court shall give to such prosecutor, and also to any party in whose favor or for whose benefit any such judgment or order shall be confirmed, reasonable costs, to be taxed according to the course of the said court, and to be recovered by attachment against the person so convicted, or against whom such judgment or order shall be made, at any time after the expiration of ten days after demand and refusal to pay the same, proof of such refusal being first made; and no such recognizance shall be discharged until such costs be paid, nor in case of such judgment or order, until the same be performed.

Certiorari, when not to issue in the case of apprentices.

V. *And be it further enacted*, That no writ of *certiorari* or other process shall issue, to remove into the supreme court any proceedings had before any justice or justices of the peace, mayor, recorder or aldermen, or any of them, or before any court of general sessions of the peace, in pursuance of the act, entitled *An act concerning apprentices and servants*, until after a final determination and judgment thereon by such court of general sessions of the peace.

Habeas corpus & certiorari, when void.

VI. *And be it further enacted*, That if any writ of *habeas corpus*, *certiorari*, or other writ, shall issue, in any of the cases above mentioned, contrary to, or without the party prosecuting such writ complying with the provisions contained in this act, the justice, justices or courts, to whom the same be directed, shall and may proceed as if the same had not been issued.

C H A P. XVIII.

An ACT for the Relief of Cities and Towns from the Maintenance of Bastard Children.

Passed 6th March, 1801.

Justices to make order to charge mother or reputed father of a bastard child:

I. *BE it enacted by the People of the State of New-York represented in Senate and Assembly*, That any two justices of the peace of any city or county, one whereof residing in or near the town within which any bastard, or child begotten and born out of lawful matrimony, shall be born, upon examination of the matter, shall in their discretion make order, for the better relief of every such city or town, and shall likewise, by like discretion, make order for the keeping of every such bastard child, by charging such mother or reputed father, with the payment of money weekly, or other sustentation for the support of such child, as they shall think meet; and if after the same order by them subscribed under their

Punishment for not obey.

hands, the mother or reputed father upon notice thereof, shall not for his or her part, observe and perform the said order, then every such party so making default, shall be committed to the house of correction, or for want thereof to the common gaol of such city or county, there to remain without bail, except he or she shall put in sufficient surety to perform the said order, or personally to appear at the next general sessions of the peace to be holden in and for the city or county where such order shall be taken; and also to abide such order of the said justices of the peace, or the major part of them, in their said sessions, shall make in that behalf, if they then and there shall make any, and that if at the said sessions, the said justices shall make no other order, then to abide and perform the order before made.

ing such order;

Avoided by giving security or recognizance.

II. *And be it further enacted*, That if any woman shall be delivered of a bastard child, which shall be chargeable, or likely to become chargeable, to any city or town, or shall declare herself to be with child, and that such child is likely to be born a bastard, and to be chargeable as aforesaid, and shall in either case, in an examination to be taken in writing upon oath, before any justice of the peace of any city, or of any county wherein such town shall be, charge any person with having gotten her with child, it shall be lawful for such justice, upon application made to him by the overseers of the poor of such city or town, or persons acting as such, or by any one of them, to issue his warrant for the apprehending such person so charged as aforesaid, and for bringing him before such justice, or before any other justice of the peace of such city or county; and the justice before whom such person shall be brought, is hereby authorized and required to commit such person to the house of correction, or common gaol of such city or county, unless he shall give security to indemnify such city or town, or shall enter into a recognizance with sufficient surety, with condition to appear at the next general sessions of the peace, to be holden for such city or county, and to abide or perform such order as shall be made in pursuance of this act.

On application of the mother, the reputed father to be apprehended.

And bound to indemnify the town, or enter into recognizance.

III. *And be it further enacted*, That if the woman so charging any person shall die, or be married before she shall be delivered, or if she shall miscarry of such child, or shall appear not to have been with child at the time of her examination, then such person shall at the next general sessions of the peace, to be holden for such city or county, be discharged from his recognizance, or immediately released out of custody, by warrant under the hand and seal of any one justice of the peace of such city or county.

When the reputed father to be discharged.

IV. *And be it further enacted*, That if any woman shall be delivered of a bastard child, which shall be chargeable

When & how to apprehend the reputed.

father, if he
lives in ano-
ther county.

or likely to become chargeable to any city or town, or shall declare herself to be with child, and that such child is likely to be born a bastard, and to become chargeable to any city or town, and shall on examination to be taken in writing upon oath, before any one justice of the peace of any city or of any county, wherein such town is, charge any person with having gotten her with child in any county or city within this state, and that such person shall reside, or be in any other city or county, it shall be lawful for such justice upon application made to him, by the overseers of the poor of such city or town, or persons acting as such, or by any one of them, to issue his warrant for the apprehending such person so charged as aforesaid, and for bringing him before such justice, or before any other justice of the peace of such city or county, and it shall be the duty of the constable, or other proper officer to whom such warrant shall be directed, to carry the same to some one justice of the peace of such city or county, wherein such person resides, or is said to reside, or can be found; and such justice is hereby required upon proof being made upon oath of the hand writing of the justice granting such warrant, to indorse his name on such warrant, which shall be a sufficient authority to the person bringing such warrant, and to all other persons to whom such warrant was originally directed, to execute such warrant in such other city or county where such warrant was indorsed, and to apprehend and take such person so charged as aforesaid, before the justice who indorsed such warrant, or some other justice of the peace of such city or county where such warrant was indorsed; and in case such person so apprehended and charged as aforesaid, shall be willing and ready to give security to indemnify such city or town, where such bastard child is chargeable, or likely to become chargeable, or enter into recognizance for his appearance at the next general sessions of the peace, to be held in and for the city or county wherein such town lies, such justice of such other county or city before whom such person shall be brought, shall take such security or such recognizance as aforesaid, in the same manner as any justice of the peace of the proper city or county might have done; and the justice so taking such security or recognizance, shall deliver the same, together with all other proceedings had or done by him in the premises, to the constable or other person so bringing such person before him, who are hereby required to receive the same, and to deliver over such recognizance and other proceedings to the justice or justices who originally granted such warrant, or to some other justice of the peace of such county or city, where such warrant

was granted; and such justice or justices are hereby required to proceed, as if the said recognizance and other proceedings were had or taken by themselves; and such recognizance and other proceedings shall be as effectual in law, as if the same had been entered into, taken and acknowledged before a justice of the peace for the proper city or county where the said bastard child is chargeable, or likely to become chargeable, and the same proceedings shall be had thereon; and in case such constable or other person to whom such recognizance and other proceedings shall be so delivered, shall refuse or neglect to deliver over the same, as herein before directed, such constable or other person shall forfeit the sum of one hundred and twenty-five dollars, to be recovered against him by action of debt, or by information, in any court of record, by any person who will sue for the same; and if such person so apprehended as aforesaid, shall not give such security, or enter into such recognizance to the satisfaction of the justice, before whom such person shall be so brought, in such other county or city, then the constable or other person shall take such person so apprehended, before the justice who issued such warrant originally, or before one of the justices of the peace of the city or county where such warrant was issued. And the said justice or justices shall proceed against such person so charged, and so brought before him or them, as they might or ought to have done, if the said person resided in the county or city where such warrant was issued. *And further,* That no action of trespass, information, indictment, or other action, shall be brought or prosecuted by any person whatsoever, against the justice who shall indorse such warrant for or by reason of his indorsing the same, but such person shall be at liberty to bring or prosecute his action against the justice who granted such warrant, in the same manner as he might have done if this act had not been passed.

V. *And be it further enacted,* That if any recognizance already taken, or hereafter to be taken, in any case concerning bastardy, shall become forfeited, such recognizance shall not be estreated and sent into the court of exchequer, but the court of sessions of the peace to which such recognizance may be returned, shall direct the clerk of the city or county to prosecute a suit upon the said recognizance, in the court of common pleas of the city or county where the person or persons who entered into such recognizance can be found; and the money, when recovered, shall, after deducting the charges of such recovery, be paid by such clerk to the overseers of the poor of the city or town, for the indemnification whereof such recognizance was taken, to be applied to the relief of the poor thereof. And it shall be lawful for the court of

Recognizances under this act, if forfeited, to be at the direction of the sessions.

sessions, into which such recognizance is or shall be returned, at any time after the forfeiture thereof, to order the clerk of the city or county to compound for the penalty thereof, in such manner and upon such terms as the said court shall judge proper.

Persons committed, how to be discharged.

VI. *And be it further enacted*, That upon application made by any person who shall be committed to any house of correction or gaol, by virtue of this act, or by any person in his behalf, to any one justice of such city or of such county residing in or near such town, such justice is hereby authorized and required to summon the overseers of the poor of such city or town, to appear before him, at a time and place to be mentioned in such summons, to shew cause why such person should not be discharged; and if no order shall appear to have been made, in pursuance of this act, within eight weeks after such woman shall have been delivered, such justice shall discharge him from his imprisonment.

Women not to be sent for examination till a month after delivery

Nor compelled to answer till delivery.

VII. *And be it further enacted*, That it shall not be lawful for any justice of the peace to send for any woman, whatsoever, in order to her being examined concerning her pregnancy or supposed pregnancy, until one month after she shall be delivered, or to compel any woman before she shall be delivered, to answer to any question relating to her pregnancy.

When & how the estate of the father or mother of a bastard child, who abscond, may be appropriated for such child.

VIII. *And be it further enacted*, That it shall be lawful for the overseers of the poor of any city or town where any bastard child shall be born, to apply to any two justices of the peace of the city or county where the estate real or personal, or any part thereof, of any putative father or lewd mother of such child who shall have run away out of such city or town shall be, and by warrant under the hands and seals of the said two justices, who are hereby authorized and required to issue the same, to seize and take the goods and chattels, and to let out and receive the annual rents and profits of the lands and tenements, of such putative father or lewd mother, so absconding as aforesaid, towards the bringing up and providing for such bastard child, and so soon as the said seizure shall be allowed of and confirmed, by the justices in their general sessions of the peace, it shall be lawful for the overseers of the poor of such city or town, or any two of them, from time to time, and as often as the case may require, to sell so much of the said goods and chattels at public vendue, to the highest bidder, and to receive the said rents and profits, or so much thereof as shall be ordered by the the said sessions, and to apply the money arising therefrom towards the bringing up and providing for such bastard child. *And further*, That the said overseers of the poor shall be accountable to the justices of the peace, in their said general sessions, for all such monies as shall arise from every such

sale, or be received by them for the rents and profits of such lands or tenements.

IX. *And be it further enacted*, That if any person shall be sued for any thing which he shall do, in execution of this act, he may plead the general issue, and give the special matter in evidence; and if a verdict shall pass for the defendant, or if the plaintiff shall be nonsuited, or discontinue his suit, the defendant shall recover treble costs, and shall have the like remedy for the same as any defendant hath in other cases.

Suits under this act regulated.

C H A P. XXIV.

An ACT prescribing the Times, Places and Manner of holding Elections, for Senators to represent this State, in the Senate of the Congress of the United States of America.

Passed 20th March, 1801.

I. **B**E it enacted by the People of the State of New-York, represented in Senate and Assembly, That the senators, to represent this state in the senate of the congress of the United States of America, shall be chosen in the same manner, that delegates to represent this state in the general congress of the United States of America, were directed to be appointed by the constitution of this state: And whenever any senator shall be chosen as aforesaid, copies of the resolutions of the senate and assembly, testifying such choice, signed by the president of the senate and speaker of the assembly, shall be thereupon delivered to the person so chosen a senator, as evidence of such election.

Senators in Congress, how to be chosen:

Evidence of their election

II. *And be it further enacted*, That on the first Tuesday of February, next before the expiration of the time for which any senator is or shall be chosen as aforesaid, if the senate and assembly of this state be then in session, and if not, then within ten days after a quorum of both houses shall be assembled, at the then next meeting of the legislature of this state, an election shall be held in manner aforesaid, at the place where the senate and assembly shall be then sitting, for a senator as aforesaid, in the room of such senator so going out of office. And whenever the seat of any senator, chosen to represent this state as aforesaid, shall become vacant before the expiration of the time for which he is or shall be chosen, another senator shall be chosen in his room, in the manner aforesaid, within ten days after the legislature shall have notice of such vacancy, at the place where they shall be then sitting.

Time of choosing senators.

In case of vacancies.

An ACT concerning Writs of Error and to prevent Delays of Execution.

Passed 20th March, 1801.

Writs of error, when of right ;

Of grace.

Error, when *supersedas* to execution in personal actions ;

When in dower and ejectment.

I. **B**E it enacted by the People of the State of New-York, represented in Senate and Assembly, That writs of error in all civil cases, and in criminal cases not capital, shall be considered as writs of right, and issue of course, subject to the regulations prescribed by law ; and in all capital cases, writs of error shall be considered as writs of grace, and shall not issue but by order of the chancellor made upon motion or petition, notice whereof shall be given to the attorney general or prosecutor for the people.

II. *And be it further enacted*, That no execution shall be stayed by any writ of error, or *supersedas* thereon, brought to reverse any judgment given in any personal action, unless the party prosecuting such writ with two sufficient sureties, or in case of the absence of such party, unless three sufficient sureties to be approved of by the court in which such judgment shall be given, shall before such execution be stayed, become bound, unto the party in whose favor such judgment was given, by recognizance to be acknowledged in such court, in double the sum recovered by such judgment, conditioned to prosecute such writ of error to effect, and also to pay and satisfy, if such judgment shall be affirmed, the debt or damages and costs to be adjudged upon such judgment, and all costs and damages to be awarded for the delay of execution.

III. *And be it further enacted*, That no execution shall be stayed by any writ of error, or *supersedas* thereon, brought to reverse any judgment given in any writ of dower or action of ejectment, unless the party prosecuting such writ of error, or in the absence of such party, one sufficient surety, shall become bound to the party in whose favor such judgment shall be given, by recognizance, in such reasonable sum as the court to which such writ of error shall be directed shall think fit, with condition, that if the party prosecuting such writ of error shall be nonsuited therein, or suffer the same to be discontinued, or if such judgment be affirmed, then such party shall pay to the party in whose favor such judgment was given, all such costs and damages as shall be awarded thereupon ; and in order to ascertain such damages, the court in which such execution ought to be granted, upon such affirmance, discontinuance or nonsuit, shall issue a writ to enquire of the damages as well for the mesne profits, as for any waste committed after such first judgment given, and upon the return thereof judgment shall be given and execution awarded for such damages, together with the costs of suit :

Provided, That nothing contained in this, or the preceding section of this act, shall extend to any writ of error to be brought by an executor or administrator, nor to any popular action, or action on any penal statute, or in which the people of this state shall in any way be interested, nor to any indictment, presentment, inquisition or information.

Provida.

IV. *And be it further enacted*, That no writ of error shall issue to remove a judgment out of the supreme court, unless the party applying for such writ, shall first deliver to the officer whose duty it is to issue or seal such writ, a certificate signed by a counsellor at law in the said supreme court, setting forth, that he has examined the record and proceedings in the cause intended to be removed by such writ, or copies thereof, and that in his opinion there is error in substance therein; and if any officer shall issue or seal any such writ of error without such certificate, he shall forfeit to the adverse party two hundred and fifty dollars, to be recovered with costs of suit in any court of record, by action of debt, or by information, and shall also upon conviction thereof, forfeit and lose his office.

Writ of error on judgments in supreme court not to issue without a certificate;

Under penalty.

V. *And be it further enacted*, That the death of either party between the verdict and judgment in any action, shall not be alledged for error, so as such judgment be entered within two terms after such verdict.

Death between verdict and judgment no error.

VI. *And be it further enacted*, That in all personal actions, and actions of ejectment, commenced by original writ, after issue joined to be tried by jury, or after judgment had, it shall not be alledged or deemed to be error, that there are not fifteen days between the teste and return days of any jury process, or any writ of execution, except writs of *capias ad satisfaciendum*, in order to charge bail, or on which a writ of *exigent* is to be awarded.

Want of 15 days between teste and return of jury process and execution, when cured.

C H A P. XXVI.

An ACT for the better Support of the Public Hospital in the City of New-York.

Passed 20th March, 1801.

BE it enacted by the People of the State of New-York, represented in Senate and Assembly, That the treasurer of this state shall, upon the warrant of the comptroller, pay to the treasurer of the society of the hospital in the city of New-York, for the use of the said corporation, in quarter yearly payments, out of any monies in the treasury of this state not otherwise appropriated, the annual sum of twelve thousand five hundred dollars, for and during the term of five years, to be computed

Annual payment to the hospital for five years:

Chargeable on
auction duties

from the first day of February, one thousand eight hundred ; which sum of twelve thousand five hundred dollars so to be paid shall become chargeable upon the duties on sales at public auction or vendue in the said city of New-York.

C H A P. XXVII.

An ACT concerning the Council of Revision, the Council of Appointment, and the great and privy Seal of this State.

Passed 20th March, 1801.

Council of re-
vision :

I. **B**E it enacted by the People of the State of New-York, represented in Senate and Assembly, That whenever a bill shall have been received by the council appointed to revise all bills about to be passed into laws by the legislature, (and which council shall continue to be known by the name of the council of revision) and the said council shall have thereon declared, that it does not appear to them improper, that the said bill should become a law of this state ; or if the said bill shall have been before the said council for the space of ten days, and shall not have been returned by the said council with their objections thereto, as by the constitution of this state is required, whereby the same shall become a law of this state, a certificate thereof, as the case may be, to be subscribed by the person administering the government of this state, shall be indorsed on such law ; whereupon the said person administering the government shall with his own proper hand deliver such law to the secretary of the state, or his sworn deputy, who shall cause the same to be deposited in the secretary's office and recorded in a book to be kept for that purpose. And that whenever and as often as a bill returned by the said council of revision to be reconsidered, shall notwithstanding be passed into a law, the president of the senate, or the speaker of the assembly, in whichever the same shall upon such reconsideration last past, shall deliver such law with his own proper hand to the secretary of the the state, or his sworn deputy, to be deposited and recorded as aforesaid ; and the secretary of the state, or his sworn deputy, shall attend at every session of the legislature, for the purpose of receiving laws to be delivered to him as aforesaid.

Secretary or
his deputy to
attend.

Council of ap-
pointment.

II. *And be it further enacted,* That the secretary of this state shall, *ex officio*, be clerk of the council of appointment, and shall exercise the said office in person, or by his sworn deputy ; that on all nominations and appointment to offices within this state, by the council of appointment, the order or orders of the said council there-

upon shall be fairly written and entered in the minutes of the proceedings of the said council, which are hereby declared to be public records of this state, and shall be subscribed by such majority of the said council, as shall agree to each respective order; whereupon the clerk of the said council shall forthwith cause commissions to be made out agreeable to such orders and delivered to the person administering the government of this state, in order that the same may be sealed.

III. *And be it further enacted*, That as often as any appointment shall be made by the council of appointment, to any office civil or military in this state, and as often as any person shall be superseded, the commission and *supersedes* shall from time to time be speedily sent by the secretary of this state to the clerk of the county wherein such person so appointed or superseded shall reside; which clerk shall forthwith at the expence of this state, give notice to every person appointed to any office, or superseded, of such appointment or *supersedes*. And whenever the person administering the government of this state shall judge it for the public good that a speedier communication be made of any appointment or *supersedes*, it shall be lawful to dispatch, at the expence of this state, an express for that purpose to the person so appointed or superseded, or to the clerk of the county wherein such person shall reside, with the commission or *supersedes*.

Commissions
& *supersedes*
how to be
sent.

IV. *And be it further enacted*, That in those cases where a *supersedes* issued and sent in manner aforesaid, will not in the opinion of the person administering the government of this state, give sufficient public notice thereof, the secretary of this state shall cause notice of such *supersedes* to be published for two weeks successively in the newspaper printed by the printer to this state, which publication is hereby declared to be a sufficient notice thereof to all intents and purposes.

Notice of a
supersedes.

V. *And be it further enacted*, That the descriptions in writing of the arms and of the great and privy seal of this state, deposited and recorded in the office of the secretary of this state, shall remain as public records; and the arms and great and privy seal aforesaid, of which descriptions in writing have been deposited and recorded as aforesaid, shall be and continue the arms, the great seal and the privy seal of this state; and the person administering the government of this state, shall have the custody of the said seals; and that the said privy seal shall be the seal for military commissions; and that all such matters and things as have heretofore since the sixteenth day of March, one thousand seven hundred and seventy-eight, issued under the great seal of this state, shall continue to be issued under the great seal, and shall

The arms, &
great & privy
seal.

The seals, by
whom kept,
and how ap-
plied.

be made out and entered of record in the office of the secretary of this state.

C H A P. XXVIII.

An ACT concerning Sheriffs and their Duty in respect to Process, Arrests and the Keeping of Prisoners.

Passed 20th March, 1801.

Sheriffs to be
substantial
freeholders :

I. **B**E it enacted by the People of the State of New-York, represented in Senate and Assembly, That no person shall hereafter be appointed sheriff of any city or county of this state, unless he be a substantial freeholder within such city or county ; and that all commissions to sheriffs shall be in this form, to wit :

Form of com-
mission :

“ THE PEOPLE of the State of New-York, To all to whom these Presents shall come, Greeting :

KNOW YE, That we have committed to our well beloved, A. B. our county of W. (or, our city and county of N. as the case may be) with the appurtenances to keep during the pleasure of our council of appointment. In testimony whereof, we have caused these our letters to be made patent and the great seal of our state to be hereunto affixed.”

Writ of dis-
charge to
issue ;

And shall be tested or witnessed in the usual form ; and that a writ of discharge shall be issued at the same time, and be delivered to the new sheriff with his commission, and shall be in the form following, to wit :

Form thereof.

“ THE PEOPLE of the State of New-York ; To all to whom these Presents shall come, Greeting :

WHEREAS, we have committed to our well beloved, A. B. our county of W. (or, our city and county of N. as the case may be) with the appurtenances to keep during the pleasure of our council of appointment ; therefore we command C. D. late sheriff of the county aforesaid, (or, of the city and county aforesaid, as the case may be) that by indenture thereof in due manner to be made, he deliver to the same A. B. the county aforesaid (or, the city and county aforesaid, as the case may be) with the appurtenances, together with the rolls, writs, memorandums and all other things touching that office which are in his custody to keep in form aforesaid.”

Clerk of the
county to give
notice of such
commission.

And such writ of discharge shall be tested in the same manner as the said commission is tested, and be sealed with the great seal of this state, and the said commission and discharge shall be transmitted by the secretary of this state to the clerk's office of the city or county for which every such person shall be appointed sheriff ; and it is hereby declared to be the duty of the said clerk, to give notice of such commission without delay to the person appointed.

Sheriff of N.
York to give

II. *And be it further enacted, That every person hereafter to be appointed to the office of sheriff of the city*

and county of New-York, before he be permitted to execute the said office, shall enter into bond to the people of this state, in the penal sum of twenty thousand dollars, with two sureties, being freeholders, jointly and severally in the said sum, to answer to the people of this state and the parties, if any will complain ; which bond shall be in the form and to the effect following, to wit :

security in a certain sum :

"KNOW ALL MEN by these Presents, That we of are held and firmly bound to the people of the state of New-York, in the penal sum of twenty thousand dollars, to be paid to the said people ; for the payment whereof, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents, sealed with our seals, and dated this day of in the year one thousand

Form of the bond.

"WHEREAS the above bounden hath been appointed to the office of sheriff of on the day of last past : Now therefore, the condition of the above obligation is such, that if the said shall well and faithfully in all things perform and execute the office of sheriff of the said county of during his continuance in the said office by virtue of the said appointment, without fraud, deceit or oppression, then the above obligation to be void, or else remain in full force."

And that every person hereafter to be appointed to the office of sheriff of any other city or county within this state, except the counties of Delaware, Tioga, Cayuga, Onondaga, Ontario, Steuben, Essex and Clinton, before he be permitted to execute the said office, shall enter into bond, in the like form and effect, to the people of this state, in the penal sum of five thousand dollars, with two sureties being freeholders, jointly and severally in the said sum of five thousand dollars, to answer to the people of this state and the parties, if any will complain ; and that every person hereafter to be appointed to the office of sheriff of any of the said counties of Delaware, Tioga, Cayuga, Onondaga, Ontario, Steuben, Essex and Clinton, before he be permitted, to execute the said office, shall enter into bond, in the like form and effect, to the people of this state, in the penal sum of ten thousand dollars with any number of sureties, being freeholders, not exceeding six, jointly and severally in the said sum of ten thousand dollars, to answer to the people of this state and the parties, if any will complain. And the said bonds shall be filed in the clerk's office of the counties respectively for which such sheriffs shall be appointed ; and the said clerks respectively shall, at the time of filing the said bonds, administer an oath to each of the sureties named therein, that he is a freeholder within this state and worth the sum of five thousand dollars, or twenty thousand dollars, or such part of ten thousand dollars as shall be proportionate to the number of sureties bound in such bond, as the case may require, in the said city, or in the said counties respectively,

Sheriffs of certain other counties to give like security in another sum.

Sheriffs of the remaining counties to give like security in another sum.

Bonds, how disposed of.

Sureties to be sworn :

Clerk to determine their competency.

The above security to be given in twenty days after notice.

Sheriffs, how long to continue in office.

Sheriff to appoint an under-sheriff.

Who is to act in case of vacancy?

And the sheriff equally responsible.

over and above all debts whatsoever owing by him; which oath shall be indorsed on the said bonds, and subscribed by the said sureties respectively in the presence of the said respective clerks: But that the said clerks shall notwithstanding, respectively judge of and determine the competency of such sureties.

III. *And be it further enacted,* That upon every appointment to the office of sheriff as aforesaid, in case the person appointed shall neglect to enter into bond as aforesaid for the space of twenty days after notice shall be given to him as aforesaid of his appointment, every such person shall be deemed to have refused to accept the said office; and it shall be the duty of the clerk of the city or county in which such neglect shall happen, forthwith after the expiration of the said twenty days, to give notice thereof to the person administering the government of this state by letter, to be put into the nearest post-office.

IV. *And be it further enacted,* That it shall be lawful for every sheriff who shall be appointed and commissioned, and take upon himself the office, to continue in and to execute all the duties of such office until a new sheriff shall be appointed and commissioned in his place, and shall have delivered to him a writ of discharge, if he shall be found in the county, and if not, shall have filed the same in the office of the clerk of the county; but it shall nevertheless be the duty of the person administering the government of this state, by and with the advice and consent of the council of appointment, annually to appoint sheriffs and coroners according to the constitution of this state.

V. *And be it further enacted,* That the sheriff of each county in this state, shall as soon as may be after he takes upon himself the office, by writing under his hand and seal, make some proper person under-sheriff of the same county, during the pleasure of such sheriff; and as often as any such under-sheriff shall die, or be removed from his office, or move out of the county, or become incapable of executing the office, another shall be appointed in his place, in the manner aforesaid; and every such deputation or appointment shall be recorded in the office of the clerk of the county; and in case of the death of the sheriff of any county, the under-sheriff of the same county shall in all things execute the office of sheriff of the same county, in the name of the deceased sheriff, until another sheriff shall be appointed and commissioned, and shall take upon himself the said office; and the defaults and misfeasances in office of such under-sheriff, in the mean time as well as before, shall be adjudged a breach of the condition of the bond or security given by the sheriff who appointed him; and the executors or administrators of the deceased sheriff, shall have the like re-

medy for the defaults and misfeasances in office of such under-sheriff, happening during such interval, as such sheriff would have been entitled to if he had lived and continued in the exercise of the office until his successor was appointed and commissioned, and had taken upon himself the said office ; and in case there shall be no such under-sheriff of any county at the time of the death of the sheriff of such county, or if such under-sheriff shall die, or remove out of the county, or become incapable of executing the office, before another sheriff of the same county shall be appointed and commissioned, and have taken upon himself the said office, then and in every such case, the coroner, or coroners, if there shall be more than one in such county, shall in all things execute the office of sheriff of the same county until a sheriff thereof shall be appointed and commissioned, and shall take upon himself the said office ; and in every case of the death of a sheriff, the writ of discharge shall be delivered by the new sheriff to the under-sheriff of the same county, if there be any, and if not, then to one of the coroners of the same county, or filed in the office of the clerk of the same county ; and the new sheriff shall in all cases be considered as sheriff of the same county from the time of such delivery or filing the writ of discharge as aforesaid and not before. *Provided always*, That nothing herein contained shall be construed to prevent any sheriff from appointing such and so many deputies, besides the said under-sheriff, as he may think proper ; *And further*, That no person who may be deputed by any sheriff to do a particular act only shall be required to take the oath to be taken by the deputies of sheriffs.

If no under-sheriff, the coroners to act in case of vacancy.

Provida.

Further proviso.

Vl. And be it further enacted, That in case of any recovery by any party aggrieved against any sheriff for any default or misconduct in his office, it shall be lawful for the justices of the supreme court, upon motion in open court, to order the bond so given by such sheriff to be put in suit against such sheriff, or his sureties, or all or any of them, and when judgment shall be obtained on such bond, the said said supreme court shall, upon motion in open court, direct so much money to be levied thereon as shall be sufficient to pay the party the debt or damages so recovered, with costs, and to be paid to such party grieved ; but if such sheriff or his sureties, or either of them, shall pay the debt or damages so recovered against such sheriff with costs, then such suit on such bond shall thereupon be stayed and be no further prosecuted. *And further*, That if after judgment obtained upon such bond, any other party aggrieved and who shall have recovered any debt or damages against such sheriff, for any default or misconduct in his office, shall apply to the said supreme court for relief, the said supreme shall,

Sheriffs bond when to be put in suit :

Order of the supreme court thereon.

upon motion in open court, direct such further sum to be levied on such judgment on such bond as shall be sufficient to pay the debt or damages so recovered with costs, and to be paid to such party aggrieved ; and shall so direct, as often as any recovery shall be had against such sheriff for any misconduct or default in his office. *Provided*, That the sureties in any bond shall not be charged by virtue of this act beyond the amount of the sums in which they shall be bound in any such bond, nor in the said counties of Delaware, Tioga, Cayuga, Onondaga, Ontario, Steuben, Essex and Clinton, beyond the amount of the one-sixth part of the sum in which they shall be bound as aforesaid. *And provided*, if two or more such recoveries shall be had against such sheriff in the same term or at the same time, amounting together to more than the whole amount of the sums contained in such bond, the said supreme court shall order the monies to be levied thereupon to be distributed to the parties respectively in proportion to the amount of their respective recoveries.

Proviso.

Further proviso.

Sheriffs to have custody of gaols, with a restriction as to the sheriff of N. York

VII. *And be it further enacted*, That in the city and county of New-York, the sheriff thereof shall have the custody of the gaol for the confinement of persons on civil process only, and the prisoners in the same ; and the sheriff of each of the other cities and counties of this state, shall have the custody of the gaols and prisons thereof, and the prisoners in the same ; and the same sheriffs respectively shall put in such keepers for whom they will answer.

Sheriffs to receive prisoners under process of the United States.

VIII. *And be it further enacted*, That it shall be the duty of the sheriffs of the several cities and counties of this state, and the duty of the keeper of the bridewell § in the city of New-York, to receive into their respective gaols, and safely keep, all prisoners who shall be committed to the same by virtue of any process to be issued under the authority of the United States, until they shall be discharged by the due course of the laws thereof : the United States supporting such of the said prisoners as shall be committed for offences against the said United States. *Provided always*, That persons committed in the city of New-York on civil process only, be committed to the gaol in the custody of the sheriff of the said city, and persons committed in the said city charged with any offence whatsoever, be committed to the gaol in the custody of the keeper of the bridewell in the said city ; and in case any prisoner shall escape out of the custody of any sheriff or keeper to whom such prisoner may be committed as aforesaid, such sheriff or keeper shall be liable to the like actions and penalties as he would have

Proviso as to New-York.

Sheriffs liable for escapes of such prisoners

§ By the act of this same session, relative to gaols, sect. 1, the bridewell was to be called the city prison.

been had such prisoner been committed by virtue of any process issuing under the authority of this state; and such sheriff or keeper into whose custody any such prisoner shall be so committed, is hereby authorized to take to his own use such sums of money as shall be payable by the United States for the use of the said gaols.

IX. *And be it further enacted*, That no sheriffs or other officers, by colour of their office, shall directly or indirectly ask, demand or receive for any service or act to be by them performed in pursuance of any duty of their office, any greater or more fees than are allowed by law, on pain of forfeiting for every such offence to the party grieved his treble damages, to be recovered with costs of suit, and also the sum of two hundred and fifty dollars, the one moiety thereof to the people of this state, and the other moiety to the party who shall sue for the same; to be recovered with costs of suit, in any court of record having cognizance thereof, by action of debt or by information.

Penalty for extortion in sheriffs.

X. *And be it further enacted*, That every sheriff or other officer to whom any writ shall be delivered in the county where it is to be executed shall, if required by the person delivering the same, give to such person a certificate under his hand, without taking any thing therefor, wherein the names of the parties and the day of delivering the writ shall be mentioned; and when any writ shall be returned, the sheriff or other officer to whom the return thereof doth appertain, shall put his own name to the return of the same. And if any sheriff or other officer shall not make due return to any writ delivered to him to be executed, he shall not only be liable to attachment or amercement, at the discretion of the court where such writ shall be returnable, but also to an action on the case for damages, at the suit of the party grieved. And such sheriff or other officer shall be in like manner responsible, if, when commanded to answer of the issues of any lands or chattels, he return less than he might or ought to have returned. And it is hereby declared, that rents, corn gathered, and all moveables, except arms, implements of trade and household goods, be comprehended within the name of issues.

Sheriff to certify, if required, the delivery of writs.

And sign returns.

Process to compel a return.

How far he is liable for issues of lands, and what are issues.

XI. *And be it further enacted*, That when the sheriff or any of his deputies shall find that resistance will be made against any process of execution, the sheriff laying aside all other things and taking with him the power of the county, shall forthwith go in his proper person and do execution, and if he find resistance, he shall certify to the court the names of the resisters, aiders and favorers, and they shall be attached to appear in the same court, and if they be convicted of such resistance, they shall be punished by fine and imprisonment.

When sheriff may raise the posse comitatus on executions.

Sheriffs and
gaolers to re-
ceive felons
into prison.

What prison-
ers not to be
let at large.

Sheriffs requi-
red to take
bail bonds.

Form of the
bail bond.

Sheriffs an-
swerable ac-
cording to
their returns.

Defendants
not held to
bail, if the
cause of ac-
tion be not ex-
pressed in the
writ.

XII. *And be it further enacted,* That sheriffs and gaolers shall receive from any constable or other officer, without taking any thing therefor, and safely keep in prison, all felons indicted or taken in the fact, who shall be taken by any constable or other officer; and shall not of their own authority let out of prison, on bail or otherwise, any person in their custody by virtue of any process for any treason or felony, or upon any condemnation, execution or *capias utlagatum*, or committed by special order of any court or justices, upon pain of being punished by fine and imprisonment, and to answer the damages of the party grieved, if any be thereby aggrieved.

XIII. *And be it further enacted,* That every sheriff and other officer shall let out of prison all persons by them arrested, or in their custody by virtue of process in any personal action, upon reasonable sureties of persons having sufficient within the county where the persons be so let to bail, to answer according to the exigency of such process, except persons so in prison by condemnation, execution, *capias utlagatum*, or by special order of any court or justices; and no sheriff or other officer shall take any obligation for any cause aforesaid, or by colour of their office, but only to themselves and by the name of their office, and upon conditions written, that the prisoner named therein shall appear at the day and place required in the said process; and if any sheriff or other officer take any obligation in other form, by colour of their offices, it shall be void. And if any sheriff or other officer return upon any process that he hath taken the body, or that such person hath surrendered himself, such sheriff or other officer shall be chargeable to have the body according to the command of the said process in the usual form.

XIV. *And be it further enacted,* That no person arrested by any sheriff, officer or other person, by force or colour of any process issued out of the supreme court, except writs of *capias utlagatum*, attachments upon rescous, and attachments upon contempt, in which process the certainty and true cause of action is not expressed particularly, and for which every defendant in such process named shall be bailable by such sheriff or other officer as aforesaid, shall be compelled to give security or to enter into bond with sureties for the appearance of such person so arrested at the day and place in such process specified; but all sheriffs and other officers shall let from their custody every person by them arrested upon any process wherein the certainty and true cause of action is not particularly expressed, except as before excepted, upon the person so arrested indorsing his appearance upon such process; and where such appearance shall be so indorsed, the clerk of the supreme court shall at the return of the said process, enter the appearance of the person so indorsed: and after such appearance, no amercement or attachment shall be

set or had against any sheriff or other officer for the want of such appearance.

XV. *And be it further enacted*, That where, on any process that shall be issued out of any mayor's court or court of common pleas, special bail is not required, and the appearance of the defendant shall be indorfed on such process, the clerk of the same court shall at the return of the same process enter the appearance of every such defendant so indorfed, which shall be a sufficient appearance of every such defendant to enable the plaintiff to proceed to judgment and execution in the suit.

Clerk to enter appearance, when indorfed, on writs in the courts of common pleas.

XVI. *And be it further enacted*, That if any sheriff or other officer, shall have in his custody any person by virtue of any process or warrant whatsoever, it shall not be lawful for such officer to carry the said person to any tavern, ale-house, or other public victualling or drinking house, without the voluntary consent of the said person, so as to charge such prisoner with any sum of money for any drink, victuals, or other thing whatsoever, but what the said person shall call for of his own accord: and such officer shall not directly or indirectly demand, take or receive any other or greater sum than what by law ought to be taken or demanded for such arrest, taking, or waiting until such person shall have procured an appearance, found bail, agreed with his adversary or be sent to gaol; nor take or exact any other reward or gratuity for so keeping the said person out of gaol than what such person shall of his own accord voluntarily give; nor take or receive any other or greater sum for each night's lodging or other expences than what is reasonable and fitting in such cases, or shall be so adjudged by the next justice of the peace, or at the general sessions; and shall not cause the said person to pay for any drink, victuals or other things than what such person shall voluntarily and particularly call for. And every sheriff or other officer or person, having the custody of any such prisoner, shall permit him, at his own will and pleasure, to send for and have any beer, ale, victuals and other necessary food, where and from whom any such prisoner pleases, and to have and use such bedding, linen and other things, as such prisoner shall think fit, without any detaining or paying, for the same or any part thereof; and shall not demand, take or receive of such prisoner any other or greater fees, for his commitment, release or discharge, than shall be allowable by law, nor any thing whatsoever for the chamber rent of such prisoner. *And further*, it shall not be lawful for any sheriff or keeper of any gaol to put or keep prisoners for debt and felons together in one room, but they shall be kept separately, in distinct rooms.

Prisoners not to be carried to taverns, &c. without consent;

Nor illegal fees demanded

Nor any reward for keeping a prisoner out of gaol.

Prisoners how to be kept in gaol.

XVII. *And be it further enacted*, That every sheriff and other officer, who shall offend against any thing in

Penalties for certain offences.

either of the four last preceding sections of this act, shall forfeit his office or place, and also treble damages to the party grieved, to be recovered by action of debt or information, in any court having cognizance thereof, with costs of suit.

Prisoners how
to be kept
when charged
in execution:

Penalty on of-
fices of such
prisoners.

XVIII. *And be it further enacted,* That every person, who shall be arrested by virtue of any writ of execution to be issued from any court of record against his or her body for any debt or damages by any sheriff or other officer to whom any such writ shall be directed, and every person who shall be committed to the custody of any sheriff or other officer in execution of any such debt or damages, shall be safely kept in prison in close and secure custody, without bail, living at his or her own costs, until such person shall satisfy such debt and damages. And if any such sheriff or other officer, shall permit any such person so arrested or committed to go out of prison, or be at large, by bail or otherwise, without the assent and agreement of the plaintiff or party in whose favor such execution may be, such sheriff or other officer shall thereby become answerable to such plaintiff or party for the debt and damages for which such person was arrested or committed; and the plaintiff or party may recover the same with costs, by action of debt against such sheriff or other officer.

Prisoners in r
execution and
removed by
habeas corpus,
to be remand-
ed.

XIX. *And be it further enacted,* That if any writ shall be granted commanding the sheriff or keeper of the prison where any person shall be so charged in execution for any debt or damages as aforesaid, to have the body of such prisoner with the cause of his imprisonment in the chancery or in any other court, or before the chancellor or any judge, and it be returned upon the said writ that such prisoner is charged in execution as aforesaid; then and in every such case, such prisoner shall be immediately remanded, and shall remain in prison according to law, without being let to bail against the will of the party in whose favor such prisoner shall be so charged, until satisfaction be made for the sum adjudged.

What shall be
deemed an ef-
scape.

XX. *And be it further enacted,* That all prisoners, either upon contempt or mesne process, or in execution, who shall be committed to any prison, shall be actually detained within such prison until they shall be from thence discharged by due course of law. And if at any time the keeper of any prison shall permit or suffer any prisoner committed to his custody, either upon contempt or mesne process, or in execution, to go or to be at large out of his prison, except by virtue of some writ of *habeas corpus* or rule of court, which rule of court shall not be granted but on motion made or petition read in open court, every such going or being out of the said prison shall be adjudged and is hereby declared to be an escape.

Penalty for
making a re-

XXI. *And be it further enacted,* That if any sheriff or

keeper of any prison shall take any sum of money, reward or gratuity whatsoever, or any security for the same, to procure, assist, connive at, or permit any escape of any prisoner in his custody, and shall be thereof lawfully convicted, every such sheriff or keeper shall for every such offence forfeit the sum of one thousand two hundred and fifty dollars, and his said office, and be for ever after incapable of executing the said office.

ward for, or
conniving at
escapes.

XXII. *And be it further enacted*, That no retaking on fresh pursuit shall be given in evidence on the trial of any issue in any action of escape against any sheriff or keeper of any prison, unless the same shall be specially pleaded, or notice thereof in writing be given with the general issue, and no such special plea of retaking on fresh pursuit, or plea of the general issue with notice of such special matter, shall be received or allowed, unless oath be made in writing by such sheriff or keeper of any prison against whom such action shall be brought, and filed with such plea, that the prisoner, for whose escape such action is brought, did without his consent, privy or knowledge make such escape; and if such affidavit shall at any time afterwards appear to be false, and such sheriff or keeper of any prison shall be convicted thereof by due course of law, he shall forfeit the sum of one thousand two hundred and fifty dollars.

Retaking on
fresh pursuit,
when & how
to be plead :

To be accom-
panied with
an oath.

Penalty for
swearing
falsely.

XXIII. *And be it further enacted*, That if any person who shall be taken on any execution, or committed thereon to any prison, shall escape by any ways or means howsoever, the creditor at whose suit such prisoner was taken or charged in execution, may retake such prisoner by any new *capias* or *capias ad satisfaciendum*, or sue forth any other kind of execution on the judgment, as if the body of such prisoner had never been taken in execution.

Creditor may
have new exe-
cution against
the debtor
who escapes.

XXIV. *And be it further enacted*, That every sheriff, officer or keeper of any gaol, upon whom any copy of a declaration against any prisoner in his custody by virtue of any process out of any court of record shall be served, shall within ten days thereafter deliver the same to the defendant or defendants named therein, with a note of the time of the service thereof upon such sheriff or officer as aforesaid; and if any such sheriff, officer or keeper, to whom any such copy of any declaration shall be delivered as aforesaid, shall neglect to deliver the same as aforesaid, he shall be answerable to such defendant or defendants for all damages occasioned by such neglect.

Sheriff, &c.
to deliver to
prisoners co-
pies of decla-
rations served
on them for
such prisoners

C H A P. XXIX.

An ACT relative to Treason.

Passed 20th March, 1801.

Treason declared.

I. **B**E it enacted by the People of the State of New-York, represented in Senate and Assembly, That if any person do levy war against the people of this state within this state, or be adherent to the enemies of the people of this state, giving to them aid and comfort in this state, or elsewhere, and be thereof attainted of open deed, such offences, and no other, shall be adjudged treason against the people of this state.

Misprision of treason.

II. *And be it further enacted,* That concealment or keeping secret any treason shall be from henceforth adjudged, deemed and taken to be misprision of treason.

Trials thereof to be according to the common law.

III. *And be it further enacted,* That all trials to be had for any treason, or misprision of treason, shall be had according to the course of the common law and this act, and not otherwise.

Person indicted, to have a copy of the indictment and list of witnesses,

IV. *And be it further enacted,* That every person who shall be indicted for treason, or misprision of treason shall, if he or his agent or attorney require it, have a true copy of the whole indictment with a list of the witnesses to be produced on the trial for proving the said indictment, mentioning their names, profession and place of abode, delivered unto him five days at least before he shall be tried for the same. And that every person indicted or tried for any treason, or misprision of treason, shall be admitted to make his full defence by counsel, and to make any proof that he can produce for his defence by witnesses on oath. And in case any person indicted shall desire counsel, the court before whom he shall be tried, or some judge thereof, shall immediately upon his request assign to such person so many counsel, not exceeding two, as he shall desire, to whom such counsel shall have free access at all seasonable hours. And that every person who shall be indicted and tried for any treason, or misprision of treason, shall have a copy of the panel containing the names, places of abode and additions of the jurors who are to try him, duly certified by the sheriff and delivered to him four days at least before he shall be tried. And that all persons so indicted shall have like process of the court where they shall be tried, to compel their witnesses to appear for them at such trial as is usually granted to compel witnesses to appear against them.

And counsel assigned, and witnesses on oath,

And copy of the panel,

And process for his witnesses.

Two witnesses necessary.

V. *And be it further enacted,* That no person shall be indicted, tried or attainted of treason, or misprision of such treason, but by and upon the oath and testimony of two lawful witnesses, either both of them to the same overt-act, or one of them to one, and the other of them to the other

overt-act of the same treason, unless the party indicted and arraigned, or tried, shall willingly without violence in open court confess the same. And if two or more distinct treasons, of divers heads or kinds, shall be alledged in one bill of indictment, one witness produced to prove one of the said treasons, and another witness to prove another of the said treasons, shall not be deemed or taken to be two witnesses to the same treason within the meaning of this act.

And further, That no evidence shall be admitted or given of any overt-act that is not expressly laid in the indictment; and if any person arraigned for treason or misprision of treason, shall peremptorily challenge above the number of thirty-five of the jurors returned, for the trial of such person, such challenge shall be disallowed, and the trial shall proceed as if no such challenge had been made.

No evidence of acts not charged.

Peremptory challenges.

VI. And be it further enacted, That all offences by this act declared to be treason, which shall be committed upon the land, out of this state, or upon the sea, shall and may be inquired of, heard and determined in the supreme court of this state by good and lawful men of the same county where the said court shall sit, in like manner and form to all intents and purposes as if the said treasons had been committed within the same county.

Treason out of the state, or on sea, how tried.

VII. And be it further enacted, That any person being indicted for any treason or misprision of treason, may be outlawed and thereby attainted of or for any of the said offences; and that all process of outlawry to be had and made within this state against any such offenders, being resident or inhabiting out of the limits of this state, at the time of the outlawry pronounced against them, shall be as effectual in the law as if such offenders had been resident and dwelling within this state at the time of such process awarded and outlawry pronounced. But if the party so outlawed, being out of the state as aforesaid, shall within one year next after the said outlawry pronounced or judgment given upon the said outlawry, yield or surrender himself to either of the justices of the said supreme court for the time being, and offer to traverse the indictment whereupon the said outlawry shall be pronounced as aforesaid, then he shall be received to make the said traverse; and if he shall thereupon be found not guilty by the verdict of the jury, he shall be acquitted and discharged of the said outlawry, and of the penalties and forfeitures by reason of the same; and upon the trial of such traverse the defendant shall in all respects have the benefit of this act.

Outlawry for treason.

Party outlawed may surrender and go to trial.

VIII. And be it further enacted, That no indictment for any of the offences aforesaid, nor any process or return thereupon, shall be quashed on the motion of the prisoner or his counsel for mis-writing or mis-spelling, unless exceptions concerning the same be taken and made in

Proceedings not to be quashed after evidence given.

Nor judgment
arrested for
mis-spelling.

the court where such trial shall be, by the prisoner or his counsel before any evidence given in open court upon such indictment; nor shall any such mis-writing or mis-spelling after conviction on such indictment be any cause to stay or arrest judgment thereupon; but nevertheless any judgment given upon such indictment shall be liable to be reversed upon a writ of error, in the same manner as if this act had not been made.

Forfeiture for
treason.

IX. *And be it further enacted*, That every person, being hereafter lawfully convicted of any manner of treason, shall forfeit to the people of this state all such lands, tenements and hereditaments which such offender shall have of any estate of inheritance in his own right at the time of such treason committed, or at any time after, and also all his goods and chattels, saving to every person and his heirs, other than the offender and his heirs, all such rights and interests in law or equity, which they or any of them shall have at the day of committing such treason, or at any time before, in as large and ample manner as if this act had not been made. And the people of this state without any office or inquisition to be found, shall be deemed and adjudged in the actual possession of all the real and personal estate of the person so convicted or attainted which the people of this state ought lawfully to have, and which the offender so convicted or attainted shall so lose and forfeit.

Attainder not
to extend to
corruption of
blood, or for-
feit of dower.

X. *And be it further enacted*, That no attainder of any person of treason or misprision of treason shall extend to corrupt the blood of the offender, or to forfeit the dower of his wife.

C H A P. XXX.

An ACT concerning Idiots, Lunatics and Infant Trustees.

Passed 20th March, 1801.

Chancellor to
have charge
of idiots and
lunatics.

I. **B**E it enacted by the People of the State of New-York, represented in Senate and Assembly, That the chancellor shall have the care and provide for the safe keeping of all idiots and lunatics, and of their real and personal estates, and for their maintenance, and also for the maintenance of the families of such lunatics, and the education of their children, out of the personal estate of such idiots and lunatics, and the rents and profits of their real estates respectively, having regard to the amount and value of the same, and shall take care that the same be not wasted or destroyed.

Inventory of
their estate to
be filed.

II. *And be it further enacted*, That every committee of the estate of any idiot or lunatic shall, within six months after their appointment, file in the office of the register

of the court of chancery, an inventory of the whole real and personal estate of such idiot or lunatic, and therein state the income and profits thereof, and the debts and credits of such idiot or lunatic, and make oath of the truth of such inventory, which oath the said register, or a judge of any court of common pleas, or any master in chancery, is hereby authorized to administer.

III. *And be it further enacted*, That when the personal estate of any idiot or lunatic, shall not be sufficient for the discharge of his debts, it shall be the duty of the committee for the estate of such idiot or lunatic, to present a petition to the chancellor, setting forth the particulars and amount of the estate real and personal of such idiot or lunatic, and of the debts by him owing; and if it shall appear to the chancellor that the personal estate is insufficient for the payment of his debts, he shall direct a sale of the whole or such part of the real estate of such idiot or lunatic as he may think necessary for the discharge of his debts; and that whenever the rents, profits and income of the estate of any idiot shall be insufficient for his maintenance, or of any lunatic shall be insufficient for the maintenance of him and his family and the education of his children, it shall be lawful for the chancellor, upon the like petition, and if upon the whole matter he shall think it most beneficial, to direct a sale of the whole real estate of the said lunatic or idiot, or of so much and such part thereof as the said chancellor shall deem proper, and to direct how the proceeds of such sales shall be secured and the income or produce thereof appropriated; and that it shall be lawful for the chancellor, if he shall see cause, to join one or more persons with the said committee for the purpose of conducting such sales, and to give such orders and directions respecting the time and manner thereof as to him shall seem proper.

If personal estate be insufficient, chancellor to order their real estates to be sold.

Persons to join in such sales.

IV. *And be it further enacted*, That in case any idiot or lunatic shall hold any real estate in joint tenancy, coparcenary or in common, and the interest of such lunatic or idiot or of any of the parties concerned therein, shall require a partition of such estate, then it shall be lawful for the said committee, by and with the consent and approbation of the chancellor, to agree to a partition of such estate, and thereupon to execute deeds or releases of the right of such lunatic or idiot to the part or parts falling to the share of the other joint tenants, coparceners or tenants in common; which deeds or releases shall be valid in law to convey the share and part of such lunatic and idiot. *Provided always*, That no deed shall be executed by any such committee by virtue of this act, until after a report shall be made to the chancellor of such sale or partition, and the same be approved of by him.

Partition of their lands held in common, &c. how made.

Proviso.

Chancellor to
decree per-
formance of
certain con-
tracts of lu-
natics.

V. *And be it further enacted*, That the chancellor shall have power to decree and compel a specific performance of any bargain, contract or agreement, which may have been made by any lunatic while in sound mind, to the like effect as if he had continued sane, and to direct the committee of the estate of such lunatic to do and execute all necessary acts for that purpose.

The estate, in
case of reco-
very of luna-
tics, or death
of idiots or
lunatics, how
disposed of.

VI. *And be it further enacted*, That the real estate of any idiot or lunatic, shall not be aliened or disposed of otherwise than is directed by this act : and in case any lunatic shall recover his right mind, his real and personal estate or the residue thereof shall be restored to him ; and in case of the death of any idiot or of any lunatic during his lunacy, the real estate of such idiot or lunatic or the residue thereof shall descend to his heirs, and his personal estate or the residue thereof shall be distributed among his next of kin.

Infant trust-
tees may be
ordered to
convey, &c.

VII. *And be it further enacted*, That it shall be lawful for any infant, seized or possessed of any lands, tenements, or hereditaments by way of mortgage, or in trust only for others, to convey the same by the direction of the court of chancery, signified by an order made on hearing all parties concerned, and on the petition of such infant or his guardian or of any person in any way interested therein ; and such infant may be compelled by such order to convey and assure any such lands, tenements or hereditaments to any other person, in such manner as the said court by such order shall direct ; and such conveyance or assurance shall be as good and effectual in the law as if the same were made by such infant when of lawful age.

C H A P XXXI.

An ACT for the better Apprehending of Felons and other Offenders.

Passed 20th March, 1801.

Fresh pursuit
to be made
after felons,

I. **B**E it enacted by the People of the State of New York represented in Senate and Assembly, That where any felony shall be committed, public notice thereof shall be immediately given in all public places near where the same was committed, and fresh pursuit shall be forthwith made after every such felon by sheriffs, coroners, constables, marshals, and all other persons who shall be by them commanded or summoned for that purpose ; and every competent person who will not do so and be thereof convicted shall be punished by fine according to the discretion of the court having cognizance of the offence ; and every such officer who shall conceal or procure to be concealed any felony, or who shall not do his duty in the premises and be thereof convicted, shall be punished by fine and

Under penalty

Punishment
for concealing
felony.

imprisonment in the like discretion of any court having cognizance of the offence.

II. *And be it further enacted*, That in case any person against whom any warrant shall be issued by any justice of the peace for any offence shall escape, or be in any other county out of the jurisdiction of the justice granting the warrant, it shall be the duty of any justice of the peace of the county where such person shall be, upon proof of the hand writing of the justice granting the warrant, to indorse his name on the same, which shall be a sufficient authority to the person bringing the warrant and to all other persons to whom it was directed, to arrest the offender in the county where the warrant was indorsed, and to bring him before any justice of such county; and in case the offence be bailable and the offender be willing and ready to give bail to appear and answer at the next court having cognizance of the offence in the county where it was committed, the justice before whom he is brought shall take bail accordingly, and deliver the recognizance, examination of the prisoner and all the proceedings before him had to the officer or other person having charge of the prisoner, who shall take and deliver the same to the clerk of the court in which such offender is bound to appear; and such recognizance and examination or confession shall be equally valid as if taken in the county where the offence was committed: and any officer or other person refusing or neglecting to deliver over the same to the clerk as aforesaid, shall forfeit twenty-five dollars, to be recovered against him by action of debt or information by any person who will sue therefor. And if such offence be not bailable, or the offender shall not give bail to the satisfaction of the justice before whom he shall be so brought, then the officer or other person having charge of the prisoner, shall convey him to a justice of the peace of the county where the offence was committed, there to be dealt with according to law. *And further*, That no action shall be brought against any justice who shall indorse a warrant as aforesaid for indorsing the same, but such action may be brought against the justice who originally granted the warrant, in the same manner as if the offender had been arrested in the county where the warrant was granted.

If offender be in another county, warrant to be indorsed.

Proceeding on arrest of the offender in another county.

C H A P. XXXII.

An ACT concerning Counsellors, Attornies and Solicitors

Passed 20th March, 1801.

I. **B**E it enacted by the People of the State of New-York, represented in Senate and Assembly, That every person of full age and sound memory, other than defend-

Parties may appear by attorney.

ants in cases where corporal punishment may be inflicted, may appear by attorney in every action or plea, by or against him in any court in this state, or may at his election prosecute or defend the same action or plea in proper person.

Or in person.

Warrants of attorney how taken.

How the next friends or guardians of infants shall be admitted and appointed.

Warrants, when filed.

Qualifications of attorneys.

Oath.

When to be put out of the roll.

II. *And be it further enacted*, That all warrants of attorney of the parties in all actions and pleas in any court of record shall be taken before a judge of the court in which such action or plea shall be depending ; and if such action or plea be depending in the supreme court, then the same may also be taken before a judge of any court of common pleas, who shall certify and deliver the same to the party acknowledging it ; and all such warrants may be acknowledged by the party or his agent duly authorised for that purpose in writing ; and where any infant shall sue, some next friend of such infant shall be admitted in manner aforesaid to sue for such infant ; and where such infant shall be impleaded, a guardian shall in like manner be appointed to defend for him.

III. *And be it further enacted*, That the attorney for the person bringing the action shall file his warrant of attorney with the clerk of the court where the action is depending the same term he declares, and the attorney for the opposite party shall file his warrant of attorney as aforesaid the same term he appears ; and in default thereof, shall make satisfaction to the party grieved according to the discretion of the court where such default shall be made. And every attorney who shall confess any judgment in any case, shall at the time of making such confession, produce his warrant for making the same to the court or judge before whom he makes the confession, and the warrant shall then be filed with the clerk of the court in which the judgment shall be entered.

IV. *And be it further enacted*, That no person shall be admitted a counsellor, attorney or solicitor in any court, unless he be approved of by such court for his good character and learning ; and the name of every person admitted shall be put in a roll or book to be kept in each court for that purpose ; and every person so admitted shall upon such admission in open court take and subscribe an oath of office in the words following :

" I do swear, that I will truly and honestly demean myself in the practice of an attorney, (or, counsellor, or, solicitor, as the case may be) according to the best of my knowledge and ability."

V. *And be it further enacted*, That if any counsellor, attorney or solicitor shall be found notoriously in default of record or otherwise guilty of any deceit, mal-practice or misdemeanor, he may be suspended or put out of the roll at the discretion of the court, and if put out of the

roll shall never afterwards be received to act as a counsellor, attorney or solicitor in any court. *And further*, That when any attorney shall die or cease to act, or be put out of the roll of attorneys, the person for whom he was attorney shall be warned to appoint another attorney in his place.

VI. *And be it further enacted*, That if any counsellor, attorney or solicitor, be guilty of any manner of deceit or collusion, or consenting thereto, whereby to deceive the court or the party, he shall be punished by fine and imprisonment, and the party grieved shall have his action against him and recover therein treble damages and costs of suit; and if any attorney or solicitor shall wilfully delay his client's suit to work his own gain, or wilfully demand by his bill any money or allowance for or upon account of any money which he hath not laid out or become answerable for, the party grieved shall have the like action and recovery as aforesaid. And if any attorney shall knowingly and willingly permit or suffer any other person to sue out any writ, or prosecute or defend any action in his name, such attorney as well as such person shall each of them forfeit for every such offence the sum of fifty dollars, the one moiety thereof to the people of this state, and the other moiety to the party grieved; to be recovered by action of debt or by information in any court of record.

Mal-practicer,
how punished.

VII. *And be it further enacted*, That every process by which any party is to be arrested, and every writ of execution or some label annexed, shall before service or execution thereof, be subscribed or indorsed with the name of the attorney or person by whom the same process or writ of execution shall be sued forth.

Attorney's
name to pro-
cess.

VIII. *And be it further enacted*, That no attorney, solicitor, sheriff or coroner, shall commence any action for recovery of any fees or charges until eight days after he shall have delivered to the party to be charged therewith, or left for him at his dwelling house or last place of abode, a bill of such fees and charges written in a common legible hand in the English tongue, except law terms and the names of writs, and in words at length except times and sums and such abbreviations as are commonly used in the English language, subscribed with the proper hand writing of such attorney, solicitor, sheriff or coroner.

Attornies,
sheriffs, &c.
to serve bills
of costs eight
days before
suit.

IX. *And be it further enacted*, That no clerk, deputy-clerk, register or deputy-register of any court, nor any examiner or master of the court of chancery, shall act as counsellor, attorney or solicitor in any action or matter in the same court; and that no under-sheriff, sheriff's clerk or coroner shall, during his continuance in office, act as a counsellor, attorney or solicitor in any court;

Persons pro-
hibited from
practice.

Provide.

and that the attorney general shall not act as attorney or solicitor in any private suit, unless the people of this state shall be interested in the event of such suit. *Provided nevertheless*, That the clerk of the circuit court and sittings in the city of New-York, and the clerks of the circuit courts in this state may practise as attorneys and counsellors in the supreme court.

C H A P. XXXIII.

An ACT relative to the Office and Duties of the Treasurer of this State.

Passed 20th March, 1801.

Treasurer to have notice of his appointment :

I. **B**E it enacted by the People of the State of New-York' represented in Senate and Assembly, That as often as a treasurer of this state shall be appointed, the secretary of this state shall forthwith give notice thereof to the person so appointed, and such person if he accepts the said office, shall before he enters upon the execution thereof, and within ten days after such notice, appear before one of the justices of the supreme court, and take the following oath :

His oath :

" I appointed treasurer of the state of New-York, do solemnly and sincerely swear and declare in the presence of Almighty God, that I will during my continuance in the said office, well, faithfully, and honestly, to the best of my knowledge and abilities, execute all and every of the duties appertaining to the said office, and that I will not on any occasion or pretence apply any money, securities, or other effects, which may or shall come into my hands, belonging to the said state, to any private use or purpose whatsoever, and that whenever called on by the legislature, I will exhibit a true account of such monies, securities and other effects, under this my oath of office. So help me God."

To give security.

And shall also within the same time, and before he enters upon the execution of his office, give bond in the sum of fifty thousand dollars, to the people of this state, with not less than four sufficient sureties, to be approved of by the president of the senate and the speaker of the assembly, conditioned, that such person shall and will well, faithfully and honestly execute and perform the duties of the office of treasurer of this state, and that he will not during his continuance in office be concerned directly or indirectly in any trade or merchandize whatsoever ; which bond shall be lodged in the office of the secretary of this state, and shall be deemed to extend to the faithful execution of the said office of treasurer by such person until a new appointment of treasurer be made and a new bond given under such appointment.

Condition of the bond.

II. *And be it further enacted*, That the said office of treasurer shall be kept in the city of Albany, or in that part of the town of Watervleet lying between the north bounds of the said city and the creek commonly called Fifth-creek, and not more than one mile from Hudon's river.

Office to be kept in Albany.

III. *And be it further enacted*, That in case of the death or inability of any treasurer to execute his said office during the recess of the legislature, it shall be lawful for the president, directors and company of the bank of Albany, to execute the said office, in respect to the receiving and paying money, in the same manner as the treasurer of this state is or shall be authorized and directed to do by law until other provision be made, and the person administering the government of this state, shall in such case by proclamation give public notice of such death or inability.

Bank of Albany to act in case of vacancy in the office.

IV. *And be it further enacted*, That the treasurer of this state shall annually lay before the legislature, at their first meeting after the first day of January in every year, a true and exact statement of the balance in the treasury due to the people of this state, with a summary of the receipts and payments of the treasury during the preceding year.

Annually to report to the legislature.

V. *And be it further enacted*, That the banks of New-York and Albany shall be the places of deposit for all monies which may at any time be in the treasury of this state; and the treasurer is hereby directed and required to deposit all monies which may from time to time come into his hands, on account of this state, in one or other of the said banks within three days after receiving the same; and the monies so deposited by the treasurer shall be placed to his account as treasurer.

Places of deposit.

VI. *And be it further enacted*, That if any person appointed to the office of treasurer of this state shall, after a new appointment be made, and after the execution of the office under such new appointment be commenced, procure and file in the office of the secretary of this state, a certificate duly executed by the committee to be appointed to settle and audit the accounts of such person as treasurer, expressing that his accounts as treasurer are regularly stated and balanced; and also, that the balance of monies, securities and other effects, if any there be, are actually in the treasury or deposited as by law directed, such certificate, so filed in the office of the said secretary, shall be a discharge of the bond given by such person and his sureties under the former appointment; and such bond may thereupon be delivered up by the said secretary to such person or his sureties, to be cancelled.

His bond when discharged.

C H A P. XXXIV.

An ACT for suppressing Immorality.

Passed 20th March, 1801.

Travelling,
&c. forbidden
on Sunday :

Penalty for
offending.

Exposing
goods to sale,
except milk,
fish, &c. also
forbidden :

Penalty there-
for.

Process for
levying the
forfeiture.

If no distress
be had, of-
fender to be
set in the
stocks.

Fishing, mar-
keting, &c.
forbidden.

I. BE it enacted by the People of the State of New-York, represented in Senate and Assembly, That there shall be no travelling, servile laboring or working, (works of necessity and charity excepted) shooting, fishing, sporting, playing, horse racing, hunting or frequenting of tipling houses, or any unlawful exercises or pastimes, by any person or persons within this state, on the first day of the week commonly called Sunday : And that every person being of the age of fourteen years or upwards, offending in the premises, shall for every such offence forfeit and pay to the use of the poor of the city or town where such offence shall be committed, the sum of seventy-five cents. And that no person shall expose to sale any wares, merchandize, fruit, herbs, goods or chattels, upon the first day of the week commonly called Sunday, except small meat, and milk and fish, before nine of the clock in the morning, upon pain that every person so offending shall forfeit the same goods so exposed to sale to the use of the poor of the city or town where such offence shall be committed ; and if any person offending in any of the premises, shall be thereof convicted before any justice of the peace for the county, or any mayor, recorder or alderman of the city, where the offence shall be committed, upon the view of the said justice, mayor, recorder or alderman, or confession of the party offending, or proof of any witness, or witnesses upon oath, then the said justice, mayor, recorder or alderman, before whom such conviction shall be had, shall direct and send his warrant under his hand and seal to some constable of the city or county where the offence shall have been committed, commanding to seize and take the goods so exposed to sale as aforesaid, and to sell the same, and to levy the said other forfeitures or penalties by distress and sale of the goods and chattels of such offenders, and to pay the money arising by the sale of such goods so seized, and the said other forfeitures or penalties, to the overseers of the poor of the city or town where the said offence or offences shall have been committed, for the use of the poor thereof. And in case no such distress can be had, then every such offender shall by a warrant under the hand and seal of the said justice, mayor, recorder or alderman, be set publicly in the stocks for the space of two hours. *And further,* That if any person shall be found fishing, sporting, horse racing, hunting, gunning, or going to or returning from any market or landing, with carts, waggons or sleds, on the first day of the week called Sunday, it shall be lawful for any con-

stable or other citizen to stop every person so offending and to detain him or her until the next day, and then to carry or convey him or her to some justice of the peace to be dealt with according to law: *Provided always*, That no person going to or returning from any church or place of worship within the distance of twenty miles, or going to call a physician, surgeon or midwife, or carrying a mail to or from any post-office, or going express by order of any public officer, or shall be removing his family or household furniture, if such removal be not commenced on such day, shall be considered as travelling within the meaning of this act.

Proviso.

II. *And be it further enacted*, That if any person charged with having laboured or worked on the first day of the week called Sunday, shall be brought before a justice of the peace to answer to such charge, and shall then and there prove to the satisfaction of the said justice, that he or she uniformly keeps the last day of the week as holy time, and does not labour or work on that day, then such defendant shall be discharged. *Provided always*, That the work or labour with which he or she is charged, has not disturbed other persons in the observance of the first day of the week as holy time.

Persons keeping Saturday as holy time, may work on Sunday.

Proviso.

III. *And be it further enacted*, That no tavern-keeper, ale or porter-house keeper, inn-keeper, or any person retailing strong or spirituous liquors, ale or porter, within this state, shall sell or dispose of any such liquors on the first day of the week commonly called Sunday, to any person whatsoever, lodgers and travellers tolerated by law excepted; and that every person offending in the premises, and being thereof duly convicted before any mayor, recorder, alderman or justice of the peace, of the city or town where the same shall have been committed, upon the view of the said mayor, recorder, alderman or justice of the peace, or on confession of the party so offending, or upon the oath of one or more credible witnesses, shall forfeit and pay for every such offence the sum of two dollars and fifty cents.

Selling liquor prohibited on Sunday.

Penalty.

IV. *And be it further enacted*, That no person upon the first day of the week commonly called Sunday, shall serve or execute or cause to be served or executed any writ, process, warrant, order, judgment or decree, except in cases of treason, felony or breach of the peace, but that the service thereof shall be void; and any person so serving or executing the same shall be liable for damages at the suit of the party grieved.

Process not to be served on Sunday.

V. *And be it further enacted*, That if any person shall at any time hereafter profanely swear or curse, and be thereof convicted by the confession of the party offending, or on the oath of any one or more witnesses, or in the manner hereinafter mentioned, before any justice of

Profane cursing & swearing punished by law.

the peace for any county, or any mayor, recorder or alderman of any city in this state, every person so offending, shall for every such offence, forfeit and pay to the use of the poor of the city or town where such offence shall be committed the sum of thirty-seven and an half cents.

And without proof, if done in the presence of a magistrate.

VI. *And be it further enacted*, That in case any person shall profanely swear or curse in the presence and hearing of any justice of the peace for any county, or in the presence and hearing of any mayor, recorder or alderman of any city, while in the execution of his office, every such justice of the peace, mayor, recorder or alderman shall, and he is hereby authorised and required, to convict every such offender of such offence without any other proof whatsoever.

Fine how enforced and recovered.

VII. *And be it further enacted*, That in case any person who shall be convicted of profanely cursing or swearing, shall not immediately pay the respective sums so forfeited with the charges of such conviction, or give security to the satisfaction of the justice, mayor, recorder or alderman, before whom such conviction is had, for the payment thereof within six days, then every such offender being above the age of sixteen years, shall by warrant under the hand and seal of such justice, mayor, recorder or alderman, be set publicly in the stocks for the space of one hour for every single offence, and for any number of offences whereof any such offender shall be convicted at one and the same time, two hours; but if the offender shall not be above the age of sixteen years and shall not forthwith pay the said forfeitures or give security for the payment thereof, the parent or master shall pay the same, to be recovered as aforesaid.

Drunkenness punished:

VIII. *And be it further enacted*, That if any person shall be drunk, and be thereof lawfully convicted before any justice of the peace for the county, or before the mayor, recorder or any alderman of the city wherein any such offence shall be committed, either upon the view of such justice, mayor, recorder or alderman, or upon the confession of the party offending; or proof of any one or more witnesses on oath, every person so offending shall forfeit and pay for every such offence thirty-seven and an half cents, to the use of the poor of the city or town wherein such offence shall be committed. And in case any person who shall be convicted of drunkenness as aforesaid, shall not immediately pay the sum so forfeited with the charges of such conviction, or give security to the satisfaction of the justice, mayor, recorder or alderman, before whom such conviction is had, for the payment thereof within six days, every such offender shall by warrant under the hand and seal of such justice, mayor, recorder or alderman, be set publicly in the stocks for the space of two hours.

Penalty how enforced.

IX. *And be it further enacted*, That every justice of the peace, mayor, recorder or alderman, shall immediately upon information given upon the oath of any person, cause every offender against this act to appear before him, and upon such information being proved as aforesaid, shall convict such offender in such manner as in and by this act is prescribed.

Offenders against this act how to be apprehended & convicted :

X. *And be it further enacted*, That every justice of the peace, mayor, recorder and alderman, before whom any person shall be by virtue of this act convicted of any of the offences aforesaid, shall cause such conviction to be drawn up in the form following :

" CITY OF NEW-YORK, (or, *Westchester county, or, other city or county, as the case may require*) to wit :

Form of conviction :

" *Be it remembered*, that on the day of in the year of our Lord one thousand A. B. was convicted before me, C. D. mayor, (or, recorder, or, one of the aldermen of the said city, or, one of the justices of the peace of the said county) of crying, or shewing forth or exposing to sale, one (or, two, or more, specifying the number, quantity and kind of goods) on a Sunday, in the said city, (or, the town of in the said county) or, of travelling, (or, doing servile work or labor, or, of shooting, fishing, sporting, playing, horse racing, hunting, or, frequenting tipling houses, or, using some unlawful exercise or pastime) on Sunday ; or, of swearing one (or, two, or more) profane oath or oaths, (or, of uttering one (or more) profane curse, or, curses) or, of having been drunk in the said city (or, at the town of in the said county, as the case may require.) Given under my hand and seal, the day and year above said."

And no conviction or adjudication by virtue of this act shall be liable to be removed by *certiorari* into the supreme court, but shall be deemed and taken to be final.

Not removable by *certiorari*.

XI. *And be it further enacted*, That in all actions to be brought by virtue of this act, the like fees shall be allowed and taken as in cases of civil suits before justices of the peace, and no more ; and that all charges of the information and conviction of any such offenders, shall be paid by the party offending over and above the penalties inflicted by this act ; which charges shall be ascertained and settled by the mayor, recorder, alderman or justice before whom such conviction shall be had, but shall in no case exceed the sum of five dollars ; and that all penalties which shall be adjudged, levied and collected by virtue of this act, shall be received by the magistrate before whom such conviction and adjudication was had, and shall by him within thirty days after the receipt thereof, be paid over for the use of the poor in the city or town where the same was so levied and collected : *Provided always*, That if the offender shall be set in the stocks for the same offence, no charges shall be paid by any person whomsoever.

Fees & charges under this act.

Penalties applied to the use of the poor.

Proviso.

Prosecutions
to be within
30 days.

XII. *And be it further enacted*, That no person shall be prosecuted for any offence against this act, unless the same shall be prosecuted within twenty days next after the offence committed.

Persons sued
for executing
this act, may
plead the
general issue.

XIII. *And be it further enacted*, That if any action shall be brought against any person, for doing or causing to be done any thing in pursuance of this act, the defendant in such action may plead the general issue, and give the special matter in evidence; and if in any such action a verdict shall be given for the defendant, or the plaintiff become nonsuit or discontinues his action, then the defendant shall have treble costs.

Treble costs.

C H A P. XLIII.

An ACT concerning Coroners.

Passed 21st March, 1804.

Coroners to
be appointed
in each coun-
ty :

I. **B**E it enacted by the people of the State of New-York, represented in Senate and Assembly, That in every county of this state competent men shall be appointed as coroners, and it shall be the duty of every coroner to go to the places where any persons be slain, or suddenly dead, or wounded, or where houses are broken open, or treasure is said to be found, and forthwith to command twenty-four good and lawful men of his county to appear before him at such place therein as he shall appoint, and upon their oath or the oath of any twelve or more of them, and upon view of the body of any person slain, or suddenly dead, and the proof of witnesses, to inquire how, and in what manner, and when, and where, such person was slain or died, and who such person was, and of all the circumstances attending such death, and who were guilty thereof, either as principal or accessory, and in what manner, and to take and commit every one so found guilty, and also every one suspected of the death of any person, or of doing hurt to any person so as to endanger life, to the gaol of such county; and to make the like enquiry of persons who shall die in prison, or be killed by misfortune, and also of treasure found, and who were the finders or suspected thereof, and to attach such finders and bind them with at least two sufficient sureties to appear before the next justices of oyer and terminer and gaol delivery in such county to answer the premises: all which matters shall be inrolled by the coroners, and all coroners shall deliver their inquisitions and rolls to such justices in the respective counties, who shall proceed thereon against the offenders if they be in gaol, and if not, such justices shall deliver the same into the supreme court there to be proceeded upon according to law.

To inquire by
grand jury in
certain cases :

To commit
offenders,

And bind
over,

And return
their inquisi-
tions :

II. *And be it further enacted,* That every coronor upon any inquisition found before him, whereby any person shall be indicted of murder or man-slaughter, or as accessary thereto before the fact, shall put in writing the effect of the evidence given to the jury before him, and bind the witness to appear and testify against such person at the next court of oyer and terminer and gaol delivery to be holden in the same county, and shall certify the recognizances taken by him for that purpose, together with the said inquisition and evidence to such court; and in case any coronor shall neglect to perform any duty required of him by this act, and be thereof convicted before any justices of oyer and terminer and gaol delivery in such county, he shall be fined at the discretion of such justices.

To reduce examinations to writing, and bind witnesses to appear.

Penalty for neglect of duty.

III. *And be it further enacted,* That any return made and signed by any one of the coroners of any county in this state, to any future process which shall issue from and out of any court of record in this state, directed to the coroners of such county generally, shall be as good and valid in law, as if such return was made and signed by all the coroners of such county: but the act or return of any one or more of the coroners shall in no degree prejudice the rest.

Return by one coroner to process, good.

C H A P. XLIV.

An ACT concerning Promissory Notes.

Passed 21st March, 1801.

BE it enacted by the People of the State of New-York, represented in Senate and Assembly, That all notes in writing made and signed by any person or by a factor or agent of any merchant or trader usually intrusted therewith, whereby such person or any merchant or trader by such factor or agent, shall promise to pay to any other person, body politic or corporate, his or their order, or unto bearer, any sum of money therein mentioned, shall by virtue thereof be taken and construed to be due and payable as therein expressed; and shall have the same effect and be negotiable in like manner as inland bills of exchange, according to the custom of merchants; and that the payees or indorseees of every such note payable to them or their order, shall and may maintain their action for such sum of money, against the makers and indorsors of the same respectively, in like manner as in cases of inland bills of exchange, and not otherwise.

Notes payable to order or bearer, negotiable like inland bills of exchange.

And may be sued in like manner.

C H A P. XLV.

An ACT to regulate the Exportation of Flaxseed, and the Compensation to Measurers of Grain.

Passed 21st March, 1801.

Casks for flaxseed exported to Ireland or Scotland, how to be made:

Nailed.

How branded.

Penalties for not obeying such directions.

Compensation to measurers of grain, coal, &c.

I. **B**E it enacted by the People of the State of New-York, represented in Senate and Assembly, That no flaxseed shall be exported from this state to Ireland or Scotland but what shall be well cleaned and put in casks of two sizes only, one of which shall be of the following dimensions, viz. two feet nine inches long, and twenty-four inches diameter in each head, and made as nearly stave as possible, which shall contain seven bushels, and shall be made of oak, and the heads of pine or oak, with three hoops on each head, and three hoops on each bilge, and nailed with at least three nails in each head hoop, and three nails in each quarter hoop, with a good lining hoop on each head; the other size shall be made of like materials, and shall contain three and an half bushels, with the same number of hoops, and shall be nailed in the same manner, and on each cask shall be branded the name of the city or county where cleaned, with the initial letters of the christian and the surname at full length of the owner or person who cleaned the same.

II. *And be it further enacted,* That if any person shall ship, on board of any ship or vessel for exportation to Ireland or Scotland, any flaxseed, which hath not been cleaned, marked and branded as herein before directed, or in any other casks than such as are before mentioned, such person so offending shall forfeit and pay for every cask so shipped on board the sum of one dollar and twenty-five cents; and the master or commander of every ship or vessel, who shall receive on board of any ship or vessel for exportation as aforesaid, any flaxseed not cleaned, marked and branded as aforesaid, or in any other cask than such as are before mentioned, shall forfeit and pay the sum of sixty-two and an half cents for every cask so taken on board.

III. *And be it further enacted,* That the several measurers within this state shall be entitled to receive for measuring flaxseed, salt, wheat, rye, corn, buckwheat, or any other article commonly sold by the bushel, three fourth parts of a cent per bushel, and no more; and for all coal measured, at and after the rate of twenty-five cents for every chaldron and no more; the one half to be paid by the buyer and the other half by the seller.

C H A P. XLVI.

An ACT to prevent excessive and deceitful Gaming.

Passed 21st March, 1801.

I. **B**E it enacted by the People of the State of New-York, represented in Senate and Assembly, That all notes, bills, bonds, judgments, mortgages or other securities or conveyances whatsoever, given or executed by any person, where the whole or any part of the consideration of the same shall be for any money or other valuable thing won by playing at any game whatsoever, or by betting on the sides or hands of such as do play at any game, or for the repaying any money knowingly lent or advanced for such gaming or betting as aforesaid, or lent or advanced at the time and place of such play to any person so gaming or betting as aforesaid, or who shall during such play so play or bet shall be void. And where such mortgages, securities or other conveyances, shall be of lands; tenements or hereditaments or shall affect the same, such mortgages, securities or other conveyances shall enure for the sole use and benefit of such person, as would be entitled to such lands, tenements or hereditaments in case the grantor thereof, or other person so incumbering the same, had been dead, and as if such mortgages, securities or other conveyances had been made to such person so to be entitled as aforesaid; and all grants and conveyances to be made, for preventing such lands, tenements or hereditaments from coming to or devolving upon the persons hereby intended to enjoy the same as aforesaid, shall be deemed fraudulent and void.

Securities for monies won by gaming, void:

Mortgages & deeds of lands so given, to enure to the representatives of grantees or as if he were dead.

II. And be it further enacted, That every person who shall at any time or sitting, by playing at any game or by betting on the sides or hands of such as do play at any game, lose to any one or more persons so playing or betting, in the whole, the sum of twenty-five dollars in money, or any other thing of the value of twenty-five dollars, or in money and any other thing to such amount, and shall pay or deliver the same or any part thereof, it shall be lawful for such person within three months next thereafter, to sue for and recover the money or value of the things so lost and paid or delivered, or any part thereof, from the winner, with costs of suit, by action of debt founded on this act, in any court of record having cognizance of the same; in which action it shall be sufficient for the plaintiff to alledge in his declaration, that the defendant is indebted to the plaintiff in the monies so lost and paid, or in the amount of the value of the things so lost and delivered, for so much money had and received by such defendant to the plaintiff's use, without setting forth the special matter: And in case the person who shall lose such money or other thing as aforesaid, shall not within

Persons losing by gaming to 25 dolls. may recover the same back:

How to declare.

The loser not suing in three months, may

person may
sue and recover
treble the
amount.

the time aforesaid, *bona fide*, and without collusion, sue and prosecute with effect, for the money or other things so by him lost and paid or delivered, it shall be lawful for any person by any such action, to sue for and recover the same, and treble the amount or value thereof with costs of suit against such winner ; the one moiety of such forfeiture when recovered, to be paid to the overseers of the poor of the city or town in which such offence shall be committed, and the other moiety to the person who will sue for the same.

Defendant
compelled to
answer in
chancery on
oath.

III. *And be it further enacted*, That every person who by virtue of this act shall be liable to be sued as aforesaid, shall be compellable to answer upon oath such bill as shall be exhibited in the court of chancery against him, for discovering the money or other things so won at play, contrary to the true intent and meaning of this act. And it shall be lawful for such court in which such bill shall be exhibited, to proceed and decree thereupon, and enforce such decree in the same manner as is used in other causes in such court.

Persons dis-
covering and
paying, dis-
charged from
further pun-
ishment.

IV. *And be it further enacted*, That upon the discovery and repayment, or redelivery of the money or other things so to be discovered and repaid or redelivered, the person who shall so discover and repay or redeliver the same, shall be discharged from any further or other punishment, forfeiture or penalty, which he may have incurred by the playing for or winning such money or other thing so discovered and repaid or redelivered.

Persons win-
ning by fraud,
or at one
time or sit-
ting above
25 dollars, to for-
feit five times
the value.

V. *And be it further enacted*, That if any person shall by any fraud, or unlawful device or ill-practice whatsoever, in playing at any game, or by bearing a share in the wagers, or adventures in or betting on the fides or hands of such as shall play as aforesaid, win or acquire to him or to any other any sum of money or other valuable thing whatsoever, or shall at any one time or sitting, win of any one or more persons above the sum or value of twenty-five dollars, and be convicted of any of the said offences upon indictment or information, every such person shall forfeit five times the value of the money or other things so won as aforesaid ; and in case of such ill-practice as aforesaid, the person so winning as aforesaid shall be deemed infamous, and shall be imprisoned for six calendar months, and such penalty may be recovered by any person who shall sue for the same in manner aforesaid ; and when recovered shall be appropriated as herein above directed.

Winners by
fraud deemed
infamous, and
to be im-
prisoned.

Persons win-
ning or losing
certain sums,
to be indicted
and fined five
times the
value :

VI. *And be it further enacted*, That if any person shall win or lose at play or by betting at any time, the sum or value of twenty-five dollars or upwards, or within the space of twenty-four hours, the sum or value of fifty dollars, such person shall be liable to be indicted for such offence, at any time within one year after it is committed ; and be-

ing thereof legally convicted, shall be fined five times the value of the sum so lost or won ; which fine, after such charges as the court shall judge reasonable to allow to the prosecutors and witnesses out of the same, shall be paid to the overseers of the poor of the city or town where such offence shall be committed, for the use of the poor thereof.

How applied.

VII. *And be it further enacted,* That if any person so offending shall discover any other person so offending, so that such person be thereupon convicted, the person so discovering shall be discharged from all penalties by reason of any such offence, if such person so discovering hath not been before convicted thereof, and he shall be admitted as an evidence to prove the same.

Offenders discharged on discovering others.

VIII. *And be it further enacted,* That no person, other than the parties in the cause, shall be incapacitated from being a witness, touching any offence committed against this act by reason of having played, betted or staked at any game prohibited by this act.

All persons except parties, competent witnesses.

IX. *And be it further enacted,* That it shall be lawful for any two or more justices of the peace, in any city or county within this state, to cause to come before them, every person within their respective cities or counties, whom they shall have just cause to suspect to have no visible estate, profession or calling to maintain themselves by, but who do for the most part support themselves by gaming ; and if every such person shall not make it appear to such justices, that the principal part of his expences are not maintained by gaming, then such justices shall require of him sufficient sureties for his good behavior for the space of twelve months ; and in default of his finding such sureties, to commit him to the common gaol of the city or county, there to remain until he shall find such sureties.

Persons living by gaming, may be bound to good behaviour :

X. *And be it further enacted,* That if any such person so finding sureties shall during the time for which he shall be so bound to the good behaviour, at any one time or sitting, play or bet for any money or other thing, exceeding in the whole the sum or value of two dollars and fifty cents, then such playing shall be deemed to be a breach of his good behavior and a forfeiture of the recognizance given for the same.

What shall be a breach of the recognizance.

C H A P. XLVII.

An ACT for the more easy Pleading in certain Suits.

Passed 21st March, 1801.

BE it enacted by the People of the State of New-York, represented in Senate and Assembly, That if any action upon the case, trespass, battery or false imprisonment be brought against any sheriff, coroner, justice of

Actions against sheriffs and others, for acts done by virtue of their offices, declared local

The general
issue plead-
able.

Double costs
to defendant.

Persons sued
for acts done
by authority
of any statute,
how to plead.

Replication
of the plain-
tiff.

Treble dama-
ges to defend-
ant.

the peace, mayor, recorder or alderman, bailiff, constable, marshal, collector or overseer of the poor, and their deputies or any of them, or any other person who in their aid or assistance or by commandment, do any thing touching his or their office, for or concerning any matter or thing by them or any of them done by virtue of their office, the said action shall be laid within the county where the trespass or fact be done and committed, and not elsewhere ; and it shall be lawful for every person aforesaid to plead thereunto the general issue, and give the special matter in evidence. And if upon the trial of any such action, the plaintiff shall not prove that the cause of his action arose within the county wherein such action is laid, in every such case the jury which shall try the same shall find the defendant not guilty, without having regard to any evidence given by the plaintiff touching the cause for which such action is brought : And if the verdict shall pass with the defendant, or the plaintiff become nonsuit or suffer any discontinuance, in every such case, the court in which the action shall be brought, shall by virtue of this act, allow unto the defendant or defendants his or their double costs, which he or they shall have sustained by reason of his or their wrongful vexation in defence of the said action, for which the said defendant or defendants shall have like remedy as in other cases where costs are given to defendants.

II. *And be it further enacted*, That if any action shall be brought against any person for taking of any distress, making any sale, or any thing done by authority of any statute of this state, the defendant in every such action may plead not guilty, or otherwise make avowry, cognizance or justification for the taking of such distress, making of sale, or other thing done by virtue of such statute, alledging therein, that such distress, sale, trespass, or other thing whereof the plaintiff complains, was done by authority of such statute, without expressing any other matter or circumstance contained in such statute, to which avowry, cognizance or justification, the plaintiff shall be admitted to reply, that the defendant did take the said distress, make the said sale, or did any other act or trespass supposed in his declaration of his own wrong, without any such cause alledged by the said defendant, whereupon the issue in every such action shall be joined to be tried by a jury ; and upon the trial of that issue the whole matter may be given in evidence by both parties ; and after such issue tried for the defendant, or nonsuit of the plaintiff after appearance, the same defendant shall recover treble damages with his costs, which damages shall be assessed by the same jury which shall try the issue, or upon a writ to inquire of the damages as the case may require.

III. *And be it further enacted*, That in every action to be brought in the name of the people of this state, or on their behalf, on any contract or agreement whatsoever, sealed or not sealed, it shall be sufficient to state or declare, that the defendant or ancestor, testator or intestate, as the case may be, was indebted to the people of this state in the sum demanded, by reason of the breach of such contract or agreement, according to the nature of such action, whereby an action hath accrued to the people of this state to demand and have the sum so demanded, and that the particular grounds of such demand and the special matter may be given in evidence upon such declaration; and in any such action any part of the sum so declared for, as far as the testimony will warrant, may be recovered. And in all actions to be brought in the name or on the behalf of the people of this state, for the recovery of any debt appertaining or accruing to the people of this state by reason of any outlawry, forfeiture, gift of the party, or by any other collateral way or means, it shall be sufficient to alledge generally, that the party to whom the said debt was owing or belonged, did on such a day and year give the same to the people of this state, or was outlawed, or did commit some act by reason whereof the said debt did accrue to the people of this state, and the special matter may be given in evidence upon such declaration. *And further*, That in all cases where the people of this state shall be interested in the event of any suit, the same shall be defended by or under the direction of the attorney general at the expence of this state, and he may employ such counsel to assist in and concerning every such defence, as the person administering the government of this state shall from time to time deem necessary.

In suits for the people of this state on contracts, how to declare.

In suits for debts arising on forfeitures, &c. how to declare.

Attorney general to defend suits in which the people are concerned.

C H A P. XLVIII.

An ACT to prevent and punish Rapes and the forcible taking of Women.

Passed 21st March, 1801.

I. **B**E it enacted by the People of the State of New-York, represented in Senate and Assembly, That if any person shall unlawfully and carnally know any woman-child under the age of ten years, every such unlawful and carnal knowledge shall be adjudged a rape and felony. And if any person shall by force ravish any woman-child of the age of ten years or upwards, or any other woman, it shall be adjudged felony.

Rape committed on a woman child under ten years, declared felony:

Or on any woman.

II. *And be it further enacted*, That if any person shall take any woman against her will, unlawfully, and marry her, or cause her to be married to any other person by the assent of such misdoer, or defiled, every such taking, and the procuring and abetting the same shall be felony, and

Forcible taking and marrying women against their will, or defiling them, how punished.

Proviso.

punishable as in cases of rape. And every taker, procurer and abettor to the same, shall be adjudged a principal felon : *Provided however*, That nothing in this section contained shall extend to any person taking any woman, only claiming her as his ward or bond woman.

C H A P. LXIX.

An ACT for Relief against absconding and absent Debtors.

Passed 21st March, 1801.

Creditors to a certain amount of absent or concealed debtors, may apply to a judge of the supreme court :

Proof to the judge :

The judge to issue his warrant ;

How to be executed.

Notice of the attachment.

I. **B**E it enacted by the People of the State of New-York, represented in Senate and Assembly, That whenever any person, other than those who may be liable to be declared bankrupts under the laws of the United States, being indebted within this state, shall either secretly depart from or keep concealed within the same, any one creditor or joint company to whom such person is indebted in the sum of one hundred dollars or upwards, or any two to whom he is indebted in the sum of one hundred and fifty dollars or upwards, or any three to whom he is indebted in the sum of two hundred dollars or upwards, over and above all discounts, may apply to a judge of the supreme court, and make oath or affirmation in writing, that such debtor is indebted to him or them in one of the sums before mentioned, or in any sum exceeding the same, over and above all discounts, and that he or they do verily believe that such debtor is departed this state or concealed within it, with intent to defraud his creditors of their just dues; or to avoid being arrested by the ordinary process of law : which departure or concealment shall also be proved to the satisfaction of such judge by two witnesses; and on such proof, the judge shall issue his warrant to the sheriff of any one or more of the cities and counties of this state, commanding him to attach and safely keep all the estate real and personal of such debtor within his county, with all books of account, vouchers and papers relating thereto ; which warrant the sheriff shall execute, and with the assistance of two substantial freeholders forthwith make a true inventory of all such estate so attached, and return the same, signed by himself and the two freeholders, to the judge who issued the warrant.

II. *And be it further enacted*, That such judge shall immediately thereafter order notice to be given in two public newspapers of this state, one of which to be printed in the city of New-York, and the other by the printer to the state, that on application as aforesaid, he had directed all the estate of such debtor to be seized, and that unless he return and discharge his debts within three months after such notice, the estate will be sold for the payment of his debts.

III. *And be it further enacted*, That in case any sheriff shall seize any perishable goods, the judge who issued the warrant may, in his discretion, order such goods to be sold, and the monies arising therefrom to be paid to the trustees to be appointed in pursuance of this act.

Perishable goods may be sold.

IV. *And be it further enacted*, That if any sheriff shall ignorantly seize any goods or effects which shall be claimed by any person as his property, such sheriff may summon and swear a jury to try the property thereof, and if the jury by inquisition find the property of the same to be in the person so claiming or in any other person than the said debtor, the sheriff shall forthwith deliver the goods or effects to the person in whom the property thereof shall be so found, or to his authorised agent, and shall not be liable to prosecution for such seizure; and all reasonable charges arising by the sale of such perishable goods or by the said inquest, if it find the property not to be in such debtor, shall be allowed and certified by the judge issuing the warrant and paid out of the estate of the said debtor; but if the property of the goods or effects so claimed, be by such inquisition found in the said debtor, then all costs and charges arising by such claim and inquisition, or either of them, shall be paid by the person who made the claim, or procured or occasioned the said inquisition.

Claim of property how tried.

Charges of sale of perishable goods, or of such trial, how borne.

V. *And be it further enacted*, That if any person indebted to such absconding or concealed debtor, or having the possession of any of his property, shall after the first public notice aforesaid, pay any debt or deliver any such property to the absconding or concealed debtor, his attorney or assigns, the person so paying or delivering shall be deemed to have done it fraudulently, and shall answer for the value thereof to the trustees to be appointed by virtue of this act, or if sued for the same after the first public notice aforesaid by the absconding or concealed debtor, he may plead the general issue and give this act and the special matter in evidence.

After notice, all payments or delivery of property to the debtor, fraudulent.

VI. *And be it further enacted*, That all sales of the estate real or personal of such absconding or concealed debtor, and all assignments of any bill, note or other chose in action belonging to him, made after the first public notice aforesaid, shall be null and void.

Sales and assignments by debtor after notice, void.

VII. *And be it further enacted*, That if such debtor shall before the appointment of trustees hereinafter mentioned, by himself or attorney, by petition to the said judge, offer to prove to the court of which he is a judge in open court, that he is a resident within this state and was not within thirty days before issuing the warrant nor at any time after, nor is then absconding or concealing, and thereby pray that the same may be heard at the next term of such court, and shall at the same time execute

In what cases the debtor entitled to a *supersedeas* to the attachment and proceedings thereon.

and deliver to the creditor or creditors who procured the warrant a bond with sufficient security, to be approved of by the said judge, in the sum of one hundred dollars, with a condition that such debtor shall prove to such court at the then next term the said facts offered in such petition to be proved, and which are to be stated in the said condition, the said judge shall then report his proceedings in the premises to the said court at the next term thereof, which court is hereby authorized to compel the parties and their witnesses to come into court and to hear the proofs and allegations of the parties in a summary way, and to determine whether the matters in such petition have been satisfactorily proved; and if such court shall determine that they have, they shall then grant a *supersedeas* to such warrant or warrants, and such debtor shall recover his costs to be taxed by the said court in open court, of the creditor or creditors who procured the warrant or warrants to be issued; but if the court shall determine the matters in such petition not satisfactorily proved, then the obligee or obligees in such bond may by suit recover the penalty thereof with costs, the one moiety of such penalty to the use of the obligee or his legal representatives, and the other moiety thereof when recovered and received to be paid to the trustees appointed by virtue of this act, to be by them distributed in like manner as other monies which may come to their hands as trustees by virtue of this act.

Trustees when
and by whom
to be appointed.

VIII. *And be it further enacted*, That if such debtor do not return within three months next after such notice, and satisfy his creditors, not having presented the petition or given the bond as aforesaid or having done the same, and the court shall have adjudged the matters in such petition not satisfactorily proved, and shall have refused to grant a *supersedeas* to such warrant, then in either of the said cases, the judge who issued the warrant, or any other judge of the same court, shall nominate and appoint under his hand and seal, three or more fit persons to be trustees for all the creditors of such debtor; which trustees shall before they proceed, take an oath or affirmation, to be administered by the judge appointing them, well and truly to execute the trust by that appointment reposed in them, according to the best of their skill and understanding.

Oath of trustees.

Trustees to
notify their
appointment,
and to require
the creditors
and those who
owe such
debtor to ex-
hibit and pay.

IX. *And be it further enacted*, That the said trustees or any two of them, shall, as soon as may be thereafter, give notice in two of the newspapers printed in this state, one of which to be printed in the city of New-York, and the other by the printer to the state, of their appointment, and require all persons indebted to such absconding or concealed debtor, by a day certain to be mentioned in the notice, to pay all debts and sums of money which they owe to such debtor, and deliver all property of such debtor

which they have in possession to the said trustees, and also to desire all creditors of such debtor, by a day to be mentioned in the notice, to deliver to them or one of them, their respective accounts and demands against such debtor.

X. *And be it further enacted,* That each of the said trustees may take into their hands all the estate of such debtor, whether attached as aforesaid or afterwards discovered by them, and all books, vouchers and papers relating to the same; and the said trustees from their appointment shall be deemed vested with all the estate of such debtor, and shall be capable to sue for and recover the same; and all debts and things in action, due or belonging to such debtor, and all the estate attached as aforesaid, shall be by the sheriff who took the same delivered over to the said trustees, and the trustees, or any two of them, shall sell at public vendue, after fourteen days previous notice of the time and place, all the estate real and personal of such debtor as shall come to their hands, and deeds and bills of sale for the same make and execute, which deeds and bills of sale shall be as valid as if made by such debtor before the first public notice aforesaid.

Trustees vested with the debtor's estate and may sell the same.

XI. *And be it further enacted,* That if any person indebted to the said absconding or concealed debtor, or having the custody of any property belonging to him, shall conceal the same and not deliver a just account thereof to the said trustees, or one of them, by the day for that purpose appointed, the person concealing and not delivering as aforesaid, shall forfeit double the sum of the debt, or value of the property so concealed, or not accounted for; to be recovered by action by the said trustees, and applied as hereinafter directed. And the court before whom such action shall be brought, is hereby empowered to compel the person, so concealing and not accounting as aforesaid, to appear before it, and be examined on oath touching the premises, and to commit such person to prison if he refuse to be examined, or being examined, refuse to answer satisfactorily to such court.

Persons concealing effects or debts, to forfeit double the value;

To be recovered by the trustees.

Persons so concealing, to answer on oath.

XII. *And be it further enacted,* That the said trustees, may apply to any justice of the peace, who in such case is required to grant a warrant, commanding the said absconding or concealed debtor, his wife, and every other person known or suspected to detain any part of his estate, or to be indebted to it, or to know any thing concerning the concealment or embezzlement thereof, to be brought before him at such place as he and the trustees shall appoint, where the said justice or in his absence any other justice to be requested by the said trustees, shall be present, at which meeting either the said justice or the said trustees, or both, may examine on oath to be administered by the justice, every person so brought before them on the said warrant, touching all matters relative to the said debtor,

Any justice, on behalf of trustees, to issue his warrant against any person;

Such person to be examined on oath relative to the debtor & his estate:

Persons refusing to be examined or to sign the same, to be committed.

Provido, that warrant specify the default.

Further proviso, that such persons bringing *habeas corpus* are not to be discharged for want of bail.

Gaoler answerable for wilful escapes.

Provido.

Power of surviving trustees.

False swearing to be deemed perjury.

Persons discovering secreted effects, to have ten per cent.

Trustees to settle accounts, and examine on oath.

his dealings, and his estate, and reduce the examination to writing, which the said person is hereby required to sign; and if the said person shall refuse to be sworn or to answer, or shall not answer to the satisfaction of the said justice, all lawful questions to be put by the said justice and trustees, or the major part of them present, as well by word of mouth as by interrogatories in writing, or shall refuse to sign the examination, not having any reasonable objection, either to the wording thereof or otherwise, to be allowed by the said justice, the said justice shall then by warrant, commit such person to prison, there to remain without bail, until he shall submit to do what shall be required of him as aforesaid: *Provided always*, That the said warrant of commitment shall specify the particular default of such person, and if it be in not answering any question, such question shall be specified in the warrant: *And provided also*, That if such person shall bring any *habeas corpus*, to be discharged from imprisonment, and on the return thereof, there shall appear any insufficiency in the form of the warrant, then the court or judge before whom such person shall be brought by the said *habeas corpus*, shall by order or warrant, re-commit him, unless it shall be made to appear that he hath answered all lawful questions put to him, or had sufficient reason for refusing to sign the examination, as the case may be; and if such person be wilfully suffered to escape from prison, the gaoler or keeper, wilfully suffering the same, and being thereof convicted on indictment or information, shall forfeit to the trustees a sum equal to all such sum, as shall be owing to the creditor or creditors of such absconding or concealed debtor; *Provided*, the same does not exceed two thousand five hundred dollars, to be sued for and by them recovered and distributed as herein after directed.

XIII. *And be it further enacted*, That the survivors or survivor of the said trustees shall have all the powers given to the said trustees by this act, and that if any person, so to be examined, shall wilfully and knowingly swear or affirm falsely, he shall be liable to the pains and penalties of wilful and corrupt perjury.

XIV. *And be it further enacted*, That any person, other than those who have the effects in possession, who shall discover any secreted effects of such debtor, so that they be recovered by the said trustees, shall be entitled to ten per cent. on the value of the effects so discovered, to be paid by the trustees out of the estate of the said debtor.

XV. *And be it further enacted*, That the said trustees, or any two of them are hereby empowered to settle all matters and accounts between such absconding or concealed debtor, and his debtors or creditors, and to examine any person on oath concerning the same, which oath may be administered by any of the said trustees, two of them being present.

XVI. *And be it further enacted,* That in case any controversy shall arise concerning any claim by any creditor of such absconding or concealed debtor, or concerning any debt or demand claimed by the said trustees as such, the said trustees or any two of them may have such controversy determined in the following manner, to wit : The said trustees or any two of them may nominate two referees, not being creditors of such debtor or otherwise interested in such controversy, and the other party in such controversy shall nominate two indifferent persons to be referees, and their names shall be separately written on four pieces of paper, as nearly as may be of one size and figure, which shall be rolled up separately in the same manner and put into a box, and from thence one of the trustees shall draw out three of them and the persons whose names are so drawn shall finally settle the controversy ; and if any referee so appointed shall refuse or be incapable to act in a reasonable time, a new choice shall be made in manner aforesaid of another in his stead ; and in case the other party to such controversy shall refuse to nominate referees, then any two of the trustees may nominate for him and proceed to the final settlement of the controversy as aforesaid.

Trustees empowered to settle controversies by reference.

Mode of appointing referees.

XVII. *And be it further enacted,* That the trustees shall convert the estate of such debtor into money, and any two of them shall, by public notice in two of the public newspapers as aforesaid, request a general meeting of the creditors of such debtor to see the debts due to each ascertained, at a certain time and place to be specified in the notice, not less than two nor more than three months thereafter, nor more than one year and an half from the time of their first appointment ; at which meeting, or other adjourned meeting if necessary thereafter, when all accounts shall be fairly adjusted, the trustees shall proceed to make distribution among the creditors in proportion to their respective just demands, of all monies that shall come to their hands for that purpose, first deducting thereout all legal charges and commissions ; in which payment no preference shall be allowed to debts due on specialties ; and if the whole of such debtor's estate be not then distributed, the trustees or any two of them shall within one year thereafter, make a second dividend of all such monies as shall have come to their hands after the first division, and so from year to year, until a distribution shall have been made as aforesaid of all the estate of such debtor ; and the surplus, if any, after all just debts and legal charges as aforesaid are satisfied, shall be paid to such debtor or his lawful representatives.

Trustees to convert the estate into money.

And call the creditors,

And make distribution :

Charges and commissions to be deducted :

Surplus to go to the debtor.

XVIII. *And be it further enacted,* That any person who may have given credit to any such debtor on a valuable consideration for any sum of money not due at the time

Creditors whose demands are not due, to be

paid on a rebate of interest.

of any such distribution but payable afterwards, shall nevertheless be considered a creditor and receive his dividend, on deducting therefrom a rebate of legal interest for what shall be received from the time of actual payment thereof to the time such debt would have become due.

Creditors not exhibiting their demands or refusing to adjust the same, excluded from the dividend.

XIX. *And be it further enacted*, That if any creditor shall neglect or refuse to give notice of, or deliver to the said trustees an account of his demand, or having a controversy relating thereto, or concerning the estate of such debtor, shall refuse to settle the same with the trustees in manner aforesaid, until after distribution aforesaid, such creditors shall not be entitled to any dividend, and the monies in hand shall be divided among the other creditors; but if such creditor shall comply as aforesaid before any second distribution as aforesaid, then such creditor shall have the sum he would have been entitled to on the first distribution before any second dividend be made.

May comply before second dividend.

Creditors out of the state may act by attorney.

XX. *And be it further enacted*, That any creditor residing out of this state shall be deemed a creditor within this act, and his attorney on producing a letter of attorney duly authenticated and legal proof of his demand, may proceed and act in the same manner under this act as if the creditor himself were present.

Debtor on giving security before trustees appointed, entitled to a *supersedeas*.

XXI. *And be it further enacted*, That if any such debtor shall before the appointment of trustees, apply in person or by attorney to the judge who issued the warrant, and give such security as such judge shall approve to the creditor at whose instance the warrant issued, to appear and plead to any action to be brought in any court of law or equity in this state, within six months thereafter, against him by such creditor, and to pay such sum as may be recovered in such action, in that case such judge shall issue a *supersedeas* to the warrant, and no further proceedings shall be had thereon. *And further*, That where any vessel or part thereof shall be attached, the judge who issued the warrant may cause such vessel or part thereof to be valued by indifferent men, and if any person will give security, to be approved by the said judge, to the people of this state for the benefit of the creditors of such debtor, to pay the amount of such valuation to the trustees, the said judge shall cause such vessel to be discharged from the attachment.

Vessels may be discharged from attachment on security.

Death of debtor after expiration of the time in the notice, not to stay proceedings.

XXII. *And be it further enacted*, That where any such debtor shall die after the time fixed for his appearance in the notice aforesaid shall have expired, the proceedings shall go on to a final conclusion and with equal validity as if such debtor had lived.

Debtors residing out of

XXIII. *And be it further enacted*, That the estate real and personal of every debtor who resides out of this state

and is indebted within it, shall be liable to be attached and sold for the payment of his debts, in like manner in all respects, as nearly as may be, as the estates of debtors residing within this state. *Provided always*, That instead of proof of absconding or concealment of such debtor, the creditor applying shall make proof by two witnesses, to the satisfaction of the judge, of the residence of such debtor out of this state, and in every such case no trustees shall be appointed until the expiration of one year after such public notice as aforesaid.

this state, within this act.

Proviso.

Trustees not to be appointed in one year.

XXIV. *And be it further enacted*, That the first judge of the court of common pleas in each county, and the mayor and recorder of the city of New-York, and every of them, may put this act in execution in their respective counties. *Provided always*, That where warrants shall be issued by either of them, and also by a judge of the supreme court, in such case the judge of the supreme court shall award a writ of *certiorari* to the judge of the court of common pleas or mayor's court, as the case may be, to remove the proceedings before him, so that he may proceed upon both warrants or either of them.

The first judge of each county and the mayor & recorder of New-York, to execute this act.

Proviso.

XXV. *And be it further enacted*, That the judge, mayor or recorder who shall issue any warrants in pursuance of this act, shall make report to the court whereof he is judge, of all the proceedings had before or done by him out of court under this act, and cause that report to be entered in the minutes of the said court; and such report or the entry thereof shall be full and conclusive evidence in all courts of record of the facts so reported. *And further*, That he shall cause the affidavits of the creditors within thirty days after taking the same, and the warrant with the sheriff's return within thirty days after the return thereof, to be filed in the office of the clerk of the court whereof he is judge, which clerk shall mark thereon the day and year of filing the same.

Judge to report proceedings to the court whereof he is a member.

Affidavits and warrants, and the sheriff's return to be filed in thirty days.

XXVI. *And be it further enacted*, That the judge appointing trustees as aforesaid, shall at the request of any one of them indorse on such appointment an allowance that the same may be recorded; which allowance, signed by a judge of the supreme court, shall be a sufficient authority to the secretary of this state and to the clerk of any county to record the same; and if signed by the said judge of the court of common pleas or mayor's court, shall be a sufficient authority to the clerk of the court whereof he is judge to record it: and any appointment of trustees as aforesaid or the record thereof, shall be conclusive proof in all courts that the debtor therein named was at the time absconding, concealed or absent, within the meaning of this act; and that the said appointment and proceedings previous thereto were regular. And if the said trustees shall by virtue of this act sell

Judge to indorse allowance on the appointment of trustees, in order to be recorded:

Such record to be evidence

Trustees selling land, &c.

record their
appointment.

any real estate of such debtor, they shall then cause their appointment duly proved or acknowledged and allowed, to be recorded either in the secretary's office of this state or in the clerk's office of the county where the land lies.

Trustees to
keep regular
accounts:

XXVII. *And be it further enacted,* That the said trustees shall keep a regular account of all monies by them received as trustees, to which every creditor interested therein may at all reasonable times have recourse; and the said trustees shall be subject to such order for the more effectual execution of this act, as shall be made in the court of which the person appointing them is judge, and they shall render to such court on oath a just and true account in writing of their proceedings and accounts in the premises, which shall be filed with the clerk thereof: And the said trustees may before each dividend made retain in hand for their services, the sum of five per cent. on the whole sum which shall come into their hands, over and above all necessary disbursements in the premises.

Subject to the
orders of the
court:

To account
under oath.

Their com-
missions.

Persons sued
for things
done under
this act, how
to plead, &c.

XXVIII. *And be it further enacted,* That if any person be sued for any matter or thing done in pursuance of this act, he may plead the general issue and give the special matter in evidence, and also that this act shall be beneficially construed for the creditors in all courts of record.

Persons im-
prisoned in
the state-
prison, other
than for life,
absconding
debtors with-
in this act:

XXIX. *And be it further enacted,* That every person imprisoned in the state-prison, other than persons adjudged to imprisonment for life, for offences committed after the twenty-ninth day of March, in the year one thousand seven hundred and ninety-nine, shall be deemed to be an absconding debtor within this act, and trustees may immediately, on the application of a creditor, be appointed, without any proof of concealment, or warrant issued, or notice given as aforesaid, or without any regard to the amount of the sum in which any such person may be indebted. And that it shall be lawful for the trustees to apply such sum, out of any surplus which may be remaining in their hands, after paying all the debts of the prisoner, which shall come to their knowledge, for the maintenance of the wife and children, and educating the children of such person, as the chancellor, or a judge of the supreme court, or of any court of common pleas, or mayor or recorder of any city, shall from time to time allow.

Proceedings
in such cases.

Persons dis-
charged from
state-prison, to
be restored to
their estates.

XXX. *And be it further enacted,* That whenever any person against whom any such proceedings as last aforesaid shall be had, shall be lawfully liberated from the said prison, it shall be lawful for the said trustees and they are hereby required, to deliver up to him all and singular the estate real and personal of such person which may then remain in their hands, after retaining a sufficient sum to satisfy all the lawful charges and expences

which they may have incurred in the execution of their trust.

XXXI. *And be it further enacted*, That where any person so proceeded against hath been or shall be imprisoned for life, for an offence committed previous to the said twenty-ninth day of March, it shall be lawful for the said trustees and they are hereby required, after the payment of all debts due by such person, and retaining a sufficient sum to satisfy all lawful charges and expences as aforesaid, to convey and deliver the residue of the estate real and personal of such person, to such person or persons as shall be legally entitled to the same.

Proceedings in certain cases against persons imprisoned for life.

XXXII. *And be it further enacted*, That the recorder of the city of New-York shall be *ex officio* a commissioner, equally authorized and required with a judge of the supreme court, to do and execute the powers and duties which such judge is authorized and required to do and execute by virtue of this act.

Recorder of New-York invested with equal powers as a judge of supreme court under this act

C H A P. L.

An ACT for the Relief of Creditors against Heirs and Devisees.

Passed 21st March, 1801.

I. **B**E it enacted by the People of the State of New-York, represented in Senate and Assembly, That every creditor whether by simple contract or specialty, and whether the heirs are mentioned therein or not, may maintain his or her action against the heirs at law of any debtor who hath died or shall die intestate, seized of any lands, tenements or hereditaments, and against the heirs and devisees of such debtor, in case such debtor made any last will and testament; and every such heir and devisee shall be chargeable for a false plea pleaded in the same manner, as any heir would have been for any false plea pleaded in any action of debt upon specialty, or for not confessing the lands or tenements descended; and all creditors shall be preferred as in actions against executors and administrators.

Creditors may sue heirs on simple contract & specialties.

And devisees.

Who shall be answerable for false pleas.

II. *And be it further enacted*, That in all cases where any heir is, or shall be liable to pay the debt of his or her ancestor in regard of any lands, tenements or hereditaments descending to him, and shall alien the same before suit brought, every such heir shall be answerable for such debt to the value of the land so aliened; in which case all creditors shall be preferred as in actions against executors and administrators, and such execution shall be taken out upon any judgment so obtained against any such heir, to the value of the said land, as if the same were the proper debt

Heirs aliening land before the suit brought, to answer for the value:

Execution how to issue.

Lands sold before suit, not liable. of such heir, but the lands, tenements or hereditaments, *bona fide* aliened before the action brought, shall not be liable to such execution.

Heirs may plead nothing by descent.

If jury find for plaintiff, they shall inquire of the lands descended.

How judgment shall be on confession or *nihil dicit*.

Devisees liable in like manner as heirs.

III. *And be it further enacted*, That when any action shall be brought against any heir, such heir may plead '*riens per descent*' at the time of the commencement of such action, and the plaintiff may reply that such heir had lands, tenements or hereditaments from his or her ancestor before commencement of such action; and if upon issue joined thereon it be found for the plaintiff, the jury shall inquire of the value of the lands, tenements or hereditaments so descended, and thereupon judgment shall be given and execution awarded as aforesaid; but if judgment be given against such heir by confession of the action without confessing the assets descended, or upon demurrer, or *nihil dicit*, it shall be for the debt and damages without any writ to inquire of the lands, tenements and hereditaments so descended.

IV. *And be it further enacted*, That every devisee made liable by this act, shall be chargeable in the same manner as the heir or heirs at law, notwithstanding the lands, tenements and hereditaments devised shall be aliened before the action brought, and may plead the like pleas, and shall be liable to the like judgment and execution.

C H A P. LI.

An ACT for regulating Outlawries.

Passed 21st March, 1801.

Process of outlawry given in personal actions.

I. **B**E it enacted by the People of the State of New-York represented in Senate and Assembly, That in all actions of account, debt, detinue, annuity; covenant, conspiracy and of the case, and in all actions of replevin after a *capias in withernam* is returned that the person against whom it is issued has no goods, the like process may be had as in actions of trespass done with force and arms; and in these as well as in all other cases where process issues for taking the body, if it be returned, that the person against whom such process issued is not found, such process may be pursued to the *exigent* and outlawry thereupon.

Sheriff to hold a county court to proclaim outlawries.

II. *And be it further enacted*, That every sheriff shall hold a court in his county, either in person or by his sufficient deputy, on the first and third Monday in every month, in case any process shall require it, at the court house in his county, to be called his county court, for the purpose of demanding persons upon *exigents* and pronouncing outlawries thereupon: And it shall be sufficient for the sheriff or his deputy to give the judgment of outlawry, and to return the same upon the *exigent*, without saying by the judgment of the coroners.

III. *And be it further enacted*, That in every original writ of actions personal, and in all indictments and informations in which the *exigent* shall be awarded, to the names of the defendants in such writs, indictments and informations, additions shall be made of their estate or degree or mystery, and of the towns and counties of which they were or be conversant, and if by process upon the said writs, indictments or informations, in which the said additions be omitted, any outlawries be pronounced they shall be void ; and before any outlawries pronounced the said writs, indictments and informations, in which such additions shall be omitted, shall be abated by the exception of the party : *Provided always*, That although the said writs be not according to the records and deeds, by the surplusage of the additions aforesaid, they shall not be abated for that cause.

In all cases of outlawry the defendants addition to be given in the original writ, and in the indictment and information.

Proviso.

IV. *And be it further enacted*, That no person, charged as accessory in any indictment, shall be outlawed until the principal be attainted, but such indictment may be nevertheless prosecuted, and the *exigent* against the accessory shall remain until the principal be attainted by outlawry or otherwise.

Accessories not to be outlawed until the principal be attainted.

V. *And be it further enacted*, That after any person shall be indicted of treason, it shall be commanded to the sheriff to take the body of the person so indicted, and if the sheriff return on the writ that the body is not found, another writ of *capias* shall be immediately made returnable at a certain day, not less than three months after the date of the same writ ; and in the same writ shall be comprised that the sheriff shall cause the goods and chattels of the person indicted to be seized and safely kept until the day of the return of the writ, and if the sheriff return that the body is not found, and the person indicted shall not appear, the *exigent* shall be awarded, and the goods and chattels so seized shall be forfeited to the people of this state, but if the person indicted appear, or be taken by the sheriff or other officer, before the return of the second writ, then the goods and chattels shall be saved.

In treason if the person be not found, his goods to be seized on the *alias capias*.

If not found on the *alias* the *exigent* to be awarded and the goods forfeited.

VI. *And be it further enacted*, That upon every indictment against any citizen of this state, dwelling in any other county than where such indictment shall be taken, of any treason, after the first writ returned another writ shall be awarded, directed to the sheriff of the county where the person indicted is or shall be supposed to be conversant by the same indictment, returnable in the same court before whom the indictment shall be taken, at a certain day not less than three months after the date of the same writ, by which the sheriff shall be commanded to take the body of the person so indicted, if he or she shall be found in his county, and if he or she shall not be found in his county, the sheriff shall make proclamation in two of his county

Proceedings to outlawry on indictment for treason against a person residing in another county.

courts before the return of the same writ, that the person so indicted, appear at the said court at the day of the return of the same writ, to answer to the people of this state of the treason whereof he or she shall be so indicted; and after such writ so served and returned, if the person so indicted come not at the day of the return of the writ, the *exigent* shall be awarded against such person. And where any such indictment shall be taken before any other court or officer having authority to take the same, and be removed into the supreme court, no *exigent* shall be awarded by the supreme court until such writ with proclamation be awarded and served and returned as aforesaid, and if any *exigent* be awarded before such writ with proclamation be awarded, served and returned as aforesaid, and outlawry be thereupon pronounced the *exigent* and outlawry shall be void.

Writs of proclamation, &c.
how executed

VII. *And be it further enacted*, That in every action personal, and in all cases of indictments and informations for trespasses or misdemeanors wherein any writ of *exigent* shall be awarded out of any court, one writ of proclamation shall be awarded out of the same court having the like teste and return as the said writ of *exigent*, directed to the sheriff of the county where the defendant at the time of the *exigent* so awarded shall be dwelling, which writ of proclamation shall contain the effect of the action, indictment or information, and such sheriff shall cause to be made three proclamations in the form following, that is to say: One of the same proclamations in his open county court, and one other at the general sessions of the peace in the county where the defendant at the time of the *exigent* awarded shall reside, and one other one month at least before the fifth demand by virtue of the said writ of *exigent*, at or near the most usual door of the church of the town where the defendant shall reside at the time of awarding the said *exigent*, and if there be more than one church in such town, then at or near the most usual door of the church nearest the defendant's dwelling, and if there be no church in such town then at or near the most usual door of the church in the next town nearest the defendant's dwelling, and upon a Sunday immediately after divine service, if any there be; and if any such defendant shall at the time of awarding the *exigent* reside out of this state, then such writ of proclamation shall be directed to, and executed by the sheriff to whom the *exigent* shall be directed; and in such case, such writ of proclamation shall be published in one or more of the newspapers to be printed in the city of New-York, for twelve weeks before the return of the *exigent*: and all outlawries pronounced without writs of proclamation awarded and returned according to the form of this statute shall be void, and may be avoided by averment without suing out any writs of error.

VIII. *And be it further enacted,* That before any reversal of any outlawry be had, and before any allowance of any writ in error upon any outlawry, the defendant in the original action shall put in bail, if bail was required in such action, not only to appear and answer to the plaintiff in the former suit in a new action to be commenced by the said plaintiff, for the cause mentioned in the first action, but also to satisfy the condemnation if the plaintiff shall commence such suit before the end of two terms next after the allowing of the writ of error or otherwise avoiding of the said outlawry.

No outlawry reversed or error allowed until bail given.

IX. *And be it further enacted,* That no person who shall be outlawed in any court for any cause whatsoever, other than for treason or felony, shall be compelled personally to appear in court to reverse such outlawry, but may appear by attorney, and reverse such outlawry without bail in all cases, except where special bail shall be ordered by the court.

Outlawries reversed by attorney, unless for treason or felony.

No bail unless by order of the court.

X. *And be it further enacted,* That in all cases where an outlawry shall be had before judgment in any personal action, the plaintiff may suggest and set forth his cause of action upon the roll of the *exigent* after the return of the same, upon which a writ shall issue to the sheriff of the county where the action shall be brought, to summon a jury to appear in the court where the action shall be brought, if the same shall be brought in any other court than the supreme court, and if the action be brought in the supreme court, then before the justice of the supreme court at the next circuit court to be held in the county where such action shall be brought, to inquire into the truth of the matters charged by the plaintiff, and to assess the damages that the plaintiff shall have sustained thereby; and if the action shall be in the supreme court, it shall be commanded in the same writ to the justice who shall hold such circuit court that he make a return thereof to the supreme court at the time in such writ mentioned; and upon the return of such writ, if the action shall be in the supreme court, or upon the execution of such writ if the action shall be in any other court, execution shall be awarded for the sum found by the jury with costs, both upon the outlawry and prosecution of the said inquiry. *And further,* That upon the execution of every such writ of inquiry, the plaintiff shall prove his cause of action and damages in the same manner as if the defendant had appeared and traversed the same.

Upon outlawry in personal actions, plaintiff may suggest his cause of action on the roll, and recover by inquest his damages.

XI. *And be it further enacted,* That upon the payment of the sum so found upon such inquiry with costs, or where any outlawry shall be had after judgment in any personal action, upon payment of the debt or damages and costs adjudged, or upon the same being levied by ex-

Debt or damages being paid or levied, the operation of the outlawry to cease.

Entry thereof
to be made.

Such outlaw-
ry to work no
disability or
forfeiture.

ecution, such outlawry and judgment shall be considered as satisfied, and shall cease to have any further or other operation; and an entry shall in such case be made on the roll of the *exigent* after the return of the same, and after the execution or return of the inquiry, where such inquiry shall be made, that the debt or damages and costs are paid or levied, the defendant as to the outlawry and any judgment and execution thereupon shall go without day. *And further*, That no outlawry in any personal action shall work any disability or forfeiture whatsoever in favor of any other person than the plaintiff at whose suit it shall be had.

C H A P. LII.

An ACT relative to the Money of Account of this State.

Passed 21st March, 1801.

Money of ac-
count to be in
dollars,
dimes, cents
and mills.

I. **B**E it enacted by the People of the State of New-York, represented in Senate and Assembly, That all accounts in the treasury, all accounts in the county treasuries, all accounts in the several other public offices, all assessment rolls, and all accounts arising from proceedings in the courts of justice within this state, shall be kept and made out in the money of account of the United States; that is to say: In dollars or units, dimes or tenths, cents or hundredths, mills or thousandths, a dollar being four tenths of the pound heretofore used as the unit of money of account in this state, a dime being the tenth part of a dollar, a cent the hundredth part of a dollar, and a mill the thousandth part of a dollar.

Judgments &
decrees for
debt, dama-
ges or costs,
to be rendered in
dollars and
cents.

No error in
omitting
parts of a cent

II. *And be it further enacted*, That in all judgments and decrees to be made or given in any court of justice for any debt, damages or costs, the amount thereof shall be computed and ascertained, as near as may be, in dollars and cents, rejecting lesser fractions, if any; and in all executions to be issued thereon, it shall only be necessary to mention the said amount in dollars and cents, and no judgment, decree or other proceeding, shall be considered as erroneous for, or by reason of, the omission of the fractional parts of a cent in any such computation.

C H A P. LIII.

An ACT to prevent malicious Maiming.

Passed 21st March, 1801.

Malicious
maiming de-
scribed, and
made felony.

BE it enacted by the People of the State of New-York, represented in Senate and Assembly, That if any person shall on purpose, and of malice aforethought, cut

out the tongue, or put out the eyes of any other person ; or if any person shall on purpose, and of malice aforethought, and by lying in wait, unlawfully, cut out or disfigure the tongue, put out an eye, slit the nose or lip, or cut off or disable any limb or member of any other person, with intention in so doing, to murder or kill, or to maim or disfigure, in any the manners aforesaid, such other person, every such offence shall be deemed and adjudged felony ; and every person so offending, and every person who shall aid, abet, counsel, hire, or command any person to commit any of the said offences, being thereof convicted or attainted, shall be and hereby are declared to be felons.

C H A P. L I V .

An ACT to prevent Forgery and Counterfeiting.

Passed 21st March, 1801.

1. **B**E it enacted by the People of the State of New-York, represented in Senate and Assembly, That if any person shall falsely make, alter, forge or counterfeit, or cause or procure to be falsely made, altered, forged or counterfeited, or willingly act or assist in the false making, altering, forging or counterfeiting any record, charter, deed or writing sealed, will, testament, bond, writing obligatory, bill of exchange, promissory note for payment of money, or any note or specialty for the payment of money, and expressed to be payable in any goods, wares or merchandizes, indorsement or assignment of any bill of exchange, or promissory note for payment of money, or any acquittance or receipt either for money or goods, or any acceptance of any bill of exchange, or the number or principal sum of any accountable receipt for any note, bill or other security for payment of money, or any warrant or order for payment of money or delivery of goods, whether such order purports to be the order of the owner of the goods or money specified therein, or of some person who claims an interest in the same, or of any other person, with intention to defraud any person, or body politic or corporate whatsoever, or shall utter or publish as true any false, altered, forged or counterfeit record, charter, deed or writing sealed, will, testament, bond, writing obligatory, bill of exchange, promissory note for payment of money, or any note or specialty for the payment of money, and expressed to be payable in any goods, wares or merchandizes, indorsement or assignment of any bill of exchange, or promissory note for payment of money, acquittance or receipt either for money or goods, or any acceptance of any bill of exchange, or the number or principal sum of any accountable receipt for any note,

Persons forging, altering or counterfeiting any record, deed, note, order, &c. or aiding therein,

Or uttering the same as true,

bill or other security for the payment of money, or any warrant or order for the payment of money, or delivery of goods, whether such order purports to be the order of the owner of the goods or money specified therein, or of some person who claims an interest in the same, or of any other person, with intention to defraud any person, or body politic or corporate whatsoever, knowing the same to be false, altered, forged or counterfeited, then every such person being thereof convicted according to the due course of law shall be deemed guilty of felony.

Guilty of felony.

Persons forging or counterfeiting any certificate of the proof or recording any deed or writing.

II. *And be it further enacted*, That if any person shall forge or counterfeit, or be aiding or assisting in forging or counterfeiting, any certificate, or indorsement of the acknowledgment or proof of any deed or writing, made by any officer or other person duly authorized to make such certificate or indorsement, by any law of this state now or hereafter to be made, or the certificate or indorsement of the recording of any deed or writing made by the secretary of this state, or by the clerk of any county, duly authorized to make such certificate or indorsement, by any law of this state now or hereafter to be made, or shall knowingly utter any such forged or counterfeited certificate or indorsement as true, and be thereof convicted by due course of law shall be deemed guilty of felony.

Or uttering the same as true,

Guilty of felony.

Persons counterfeiting or altering any public security, or aiding therein,

III. *And be it further enacted*, That if any person shall counterfeit, or cause or procure to be counterfeited, or aid or assist in counterfeiting any certificate, or other public security issued or to be issued by the authority of this state for payment of money, or acknowledging the receipt of money or goods, or any bill of credit heretofore issued by or under the authority of the legislature of this state, or shall alter any such certificate or bill of credit, so that the same shall appear to be of greater value than the same was or shall be issued for, or intended to pass for, by the act in pursuance of which the same was or shall be issued, or shall utter, pass or give in payment, or offer to pass or give in payment, or procure to be uttered, passed or given in payment, any such counterfeited or altered certificate or bill of credit, knowing the same to be counterfeited or altered, then every such person being thereof convicted by due course of law shall be deemed guilty of felony.

Or uttering the same as true,

Guilty of felony.

Certificate or bills altered shall, until proved otherwise, be presumed to be from a less to a greater sum.

IV. *And be it further enacted*, That in all cases where any such certificate or bill of credit shall be charged to have been altered, and it shall appear to have been altered, the same shall be presumed to have been altered from a less to a greater value, sum or denomination, and the burthen of proving that the certificate or bill of credit charged to have been altered, was not altered from a less to a greater sum shall be on the defendant charged with altering the same.

V. *And be it further enacted*, That if any person shall counterfeit, or cause or procure to be counterfeited, or aid or assist in counterfeiting any of the species of gold or silver coins now current, or hereafter to be current in this state, or shall pass or give in payment, or offer to pass or give in payment the same, knowing the same to be counterfeit, then every such person being thereof convicted according to the due course of law shall be deemed guilty of felony.

Persons counterfeiting any current gold or silver coin, or aiding therein,

Or uttering the same as true,

Guilty of felony.

C H A P. LVIII.

An ACT declaring the Crimes punishable with Death or with Imprisonment in the State Prison.

Passed 21st March, 1801.

I. **B**E it enacted by the People of the State of New-York, represented in Senate and Assembly, That every person who shall hereafter be duly convicted or attainted of any manner of treason against the people of this state, or of any kind of murder, or of aiding or abetting or procuring any kind of murder to be committed, shall suffer death for the same, and be hanged by the neck until such person shall be dead.

Crimes punishable with death.

II. *And be it further enacted*, That every person who shall hereafter be duly convicted or attainted of any manner of rape, or of the detestable and abominable crime against nature committed with mankind or beast, or of burglary, or of feloniously breaking into or taking any goods or chattels from any dwelling house, any person being therein and put in fear, or of robbing any dwelling house any person being therein, or of robbing any person in any place whatsoever, or of wilfully burning any dwelling house or any barn, or of any offence specified in the act, entitled *An act to prevent forgery and counterfeiting*, or of any offence specified in the act, entitled *An act to prevent malicious maiming*; and every person who shall aid, abet, assist, counsel, hire or command any person to commit any of the said offences, and be thereof duly convicted or attainted, shall be punished with imprisonment for life in the state prison; and the justices who shall give judgment in any such case, shall upon consideration of all the circumstances thereof, adjudge the offender to imprisonment only, or to be kept in the said prison at hard labor or in solitude, or both.

Crimes punishable with imprisonment in the state prison for life.

III. *And be it further enacted*, That if any person shall be indicted of felony, for stealing of any goods or chattels in any county of this state, and thereof be convicted or attainted; if it shall appear upon evidence, and be found by the jury, that the said goods or chattels were taken by

Persons convicted of stealing goods taken by robbery or burglary in another county, punishable

with imprisonment in the state prison for life.

robbery or burglary, or in any other manner, in any other county, whereof if such person had been convicted by a jury of such other county, such person would by law be liable to imprisonment in the said prison for life, at hard labor or in solitude, or both ; then, and in every such case, judgment shall be given that the said offender be imprisoned in the said prison for life, at hard labor or in solitude, or both.

Crimes punishable for first offence with imprisonment in the state prison not exceeding fourteen years ;

IV. *And be it further enacted*, That every person who shall hereafter be duly convicted or attainted of any felony, other than such as are herein before enumerated and directed to be otherwise punished, and above the degree of petit larceny, and every person who shall aid, abet, assist, hire or command any person to commit any such felony, and be thereof duly convicted or attainted, shall be adjudged by the justices who shall give judgment thereupon, on a consideration of all the circumstances of the case, to imprisonment in the said prison at hard labor, or in solitude, or to imprisonment only, or to all or either of them, for any term not more than fourteen years. *And further*, That every person who shall be a second time duly convicted or attainted of any of the said last mentioned felonies, committed after such first conviction, shall be adjudged by the justices who shall give judgment thereupon, on like consideration of all the circumstances of the case, to imprisonment in the prison aforesaid, at hard labor or in solitude, or both, for life.

For the second offence punishable with imprisonment in the state prison, for life.

Petit larceny declared.

Crimes punishable with fine and imprisonment, or with imprisonment in the state prison not exceeding three years :

V. *And be it further enacted*, That every person who shall be guilty of the felonious taking and carrying away of the mere personal goods of another of the value of twelve dollars and fifty cents or under, if unconnected with any other crime, shall be deemed and adjudged guilty of petit larceny only ; and where any person shall hereafter be convicted of petit larceny, or of any other felony the punishment whereof is not herein before provided for, or of any assault with intent to rob, murder or commit a rape ; or where any person shall buy or receive any goods or chattels of any value whatsoever, that shall have been feloniously taken away or stolen from any other person knowing the same to be stolen, whether the principal be convicted or not ; or shall knowingly and designedly, by false pretence, obtain from any other person, any money, goods or chattels or other effects whatsoever, with intent to cheat or defraud any person or body politic or corporate ; and every person who shall aid, abet, assist, hire, command, or procure any other person to commit any of the said offences, or who shall be accessory to any felony whatsoever after the fact, shall, being convicted of any of the said offences, be punished by fine and imprisonment, or either ; or if it shall be deemed proper by the court before whom any such person shall be convicted, that instead

of, or in addition to a fine, such person so convicted, ought to be imprisoned for twelve calendar months, or for a longer time, in such case, it shall be lawful for such court in their discretion, to adjudge the person so convicted to imprisonment in the said prison, at hard labor, for any term of time, not more than three years. *And further,* That every person who shall be a second time, or oftner, convicted of any offence specified in this section (except the offences of assault with intent to rob, murder or commit a rape) shall be adjudged by the court who may give judgment thereupon, to imprisonment in the said prison, at hard labor or in solitude, or both, for any time not exceeding five years: and that every person who shall be a second time, or oftner, convicted of the offences of assault with intent to rob, murder or commit a rape, or of either of them, shall in like manner be adjudged to imprisonment in the said prison, at hard labor or in solitude, or both, for any time not exceeding eight years.

And for the second offence not exceeding five years.

And for the second offence in certain cases, not exceeding eight years.

VI. *And be it further enacted,* That no person sentenced to imprisonment, for any term of time less than twelve calendar months, shall be liable to be imprisoned in the state prison, but shall be confined in the gaol of the county in which such person may be so sentenced.

No person to be imprisoned in the state prison for a less time than a year.

VII. *And be it further enacted,* That if any person hath been or shall be convicted of any crime, for which such person hath been, or shall be sentenced to imprisonment for life in the state prison, shall break the said prison and escape from thence, and shall thereafter commit any felony, above the degree of petit larceny, then such person being thereof duly convicted, shall be hanged by the neck until dead.

Persons therein for life and breaking and escaping from prison, and committing any felony above petit larceny, punishable with death.

VIII. *And be it further enacted,* That in case any person hath been, or shall be sentenced to imprisonment in the state prison for any term of years, and shall break the said prison and escape from thence, and be retaken, such person being thereof convicted, shall be deemed guilty of felony, and shall be adjudged to imprisonment and hard labor in the said prison, for double the term of time specified in the original judgment against such person, to commence from the period of the last conviction, notwithstanding the term for which such person was to have been imprisoned may, when such person shall be retaken, have expired.

Persons therein for years and breaking and escaping from prison, to be re-imprisoned double the period.

IX. *And be it further enacted,* That if any person adjudged to be imprisoned in the said prison, otherwise than for life, shall escape from the same, then, as often as such person shall so escape and be retaken, and again imprisoned in the said prison, the period for which such person was adjudged to be imprisoned in the said prison, shall always be deemed to commence anew from the day when such person shall, after having escaped be retaken and

Persons therein for years & escaping, the original period of imprisonment to commence anew from the re-taking.

imprisoned again in the said prison, which day shall be ascertained by the inspectors of the said prison; and every such person may be so retaken and imprisoned again, notwithstanding the term for which such person was to have been imprisoned may, when such person shall be retaken, have expired.

Persons adjudged to imprisonment for life, deemed civilly dead.

X. *And be it further enacted*, That in all cases where any person shall be duly convicted or attainted, of any felony committed after the twenty-ninth day of March, one thousand seven hundred and ninety-nine, or of aiding, abetting, hiring or commanding any person to commit any such felony, and shall be adjudged to imprisonment for life in the state prison, such person shall be deemed and taken to be civilly dead to all intents and purposes in the law.

Persons therein for years and attempting to escape, deemed guilty of a misdemeanor;

And on conviction, liable to imprisonment for a further term of years.

XI. *And be it further enacted*, That if any person imprisoned in the said prison, otherwise than for life, shall attempt to escape, or shall aid any other person imprisoned in the said prison, in escaping or attempting to escape from the same, such person shall be deemed guilty of a misdemeanor, and shall on conviction be adjudged to be imprisoned in the said prison, for such further term, not for life, after the determination of the term for which such person had, at the time when the said misdemeanor was committed been adjudged to be imprisoned, as the court shall in their discretion deem proper; and the court, before whom a person may be indicted for the misdemeanor aforesaid, may from time to time, by order of the court to be directed to the inspectors of the said prison, order the defendant in such indictment, and every other person imprisoned in the said prison, being a competent witness, to be brought before them, and also to assign counsel to the defendant, which counsel shall, at all convenient times, be admitted to converse in private with such defendant in the said prison.

Persons aiding any prisoner therein to escape, punishable with imprisonment in the state prison, not exceeding ten years.

XII. *And be it further enacted*, That if any person shall in any manner howsoever, aid or assist any person confined in the said prison, in escaping or attempting to escape from the same, such person shall be deemed guilty of a misdemeanor, and shall on conviction thereof in due form of law, be adjudged to be imprisoned in the said prison at hard labor, for such term of time, as the court in which such conviction may be had, shall in their discretion deem proper, not exceeding ten years.

Perjury, and aiding prisoners to escape from any gaol, punishable with imprisonment in the state prison, not exceeding ten years.

XIII. *And be it further enacted*, That any person who shall be duly convicted of the crime of perjury, or subornation of perjury, or of aiding or assisting any prisoner lawfully committed to, or detained in any gaol, for any felony whatsoever, in escaping or attempting to escape from such gaol, though no escape be made; or of conveying any disguise, instrument or arms into any gaol to

and for the use of any such prisoner so committed or detained as aforesaid, with intention to facilitate his or her escape, though no escape be made, or attempted to be made, shall be punished with imprisonment at hard labor in the said prison; and the court before whom such conviction shall be had, shall upon consideration of all the circumstances of the case, adjudge such person so convicted, to imprisonment in the said prison at hard labor for any term not exceeding ten years, according to the nature and aggravation of the offence.

C H A P. LIX.

An ACT for the Inspection of Lumber.

Passed 21st March, 1801.

I. **B**E it enacted by the People of the State of New-York, Inspectors of lumber to be appointed. represented in Senate and Assembly, That the person administering the government of this state, by and with the advice and consent of the council of appointment, shall from time to time, whenever it shall become necessary, appoint four or more inspectors of lumber for the city and county of New-York, one inspector for the city of Albany, one inspector for the city of Hudson, one inspector for the landing at Kinderhook, and as many more in other parts of this state as may from time to time be necessary; *Provided however*, That the present inspectors of lumber shall continue in office during the pleasure of the said council. Proviso.

II. *And be it further enacted*, That the said inspectors hereafter to be appointed before they enter upon the execution of their offices, shall take the following oath, before some person authorized to administer the same, viz:

"I do solemnly swear that I will faithfully, truly, and impartially, according to the best of my judgment, skill and understanding, execute, do and perform the office and duty of an inspector of lumber, according to the true intent and meaning of the laws of this state relative to the same." Oath of inspectors.

III. *And be it further enacted*, That all timber, boards, plank of every kind, scantling or shingles, before they are exported out of this state, shall be viewed and examined by some one of the inspectors aforesaid, and the said inspectors shall on each board, plank or piece of timber, mark with a marking iron the initial letters of his christian name and surname, with the number of feet in each board, plank or piece of timber, and the said inspectors shall not mark any but what they shall deem merchantable and good; and no board shall be deemed merchantable but what is at least six inches wide clear of sap, and shall be of the actual thickness fold for; *Provided however*, How lumber to be inspected & marked. That all plank and boards which are less than six inches Proviso.

wide clear of sap, may be exported as sap plank and boards, if they be of the thickness of merchantable plank and boards, on being first inspected and marked with the letter S. the initials of the inspector's name, and the number of feet on each plank and board. And all merchantable shingles shall be of the following dimensions : The first size shall be eighteen or twenty-two inches in length, four inches in breadth and three eighths of an inch in thickness ; the second size shall be twenty-four or twenty-seven inches in length, five inches in breadth and half an inch in thickness ; and the third size shall be thirty-six inches in length, five and an half inches in breadth and five eighths of an inch in thickness, to be made of good sound rifted timber, to be packed in good bundles, each length in separate bundles in good frames securely wedged, and containing not less than five hundred shingles in each bundle ; and if any inspector upon inspection shall find that they are conformable to the dimensions of either size, he shall brand his name at full length on the frame piece of each bundle, with the number and quality of the shingles contained therein and no other.

Shingles in certain counties to be inspected before exported ;

Under a penalty.

IV. *And be it further enacted*, That no shingles shall be exported from either of the counties of Albany, Saratoga, Rensselaer or Green, until they shall have undergone inspection and been admitted and marked in manner aforesaid ; and if any person shall export by water any shingles from either of the counties aforesaid, without being previously inspected or branded as aforesaid, he shall forfeit for every bundle the sum of one dollar, to be recovered with costs of suit by any person who shall sue for the same in any court having cognizance of the same, one half to the person so suing and the other half to the use of the poor of the town in which such recovery shall be had.

Penalties for shipping lumber not inspected.

V. *And be it further enacted*, That if any person shall ship on board any ship or vessel for exportation out of this state, any boards, plank, scantling, timber or shingles, but what have been inspected by one of the inspectors aforesaid, he shall forfeit and pay for every thousand feet so shipped without inspection, the sum of two dollars and fifty cents, and for every thousand shingles, the sum of one dollar and twenty-five cents ; and the master of any ship or vessel who shall receive on board his vessel any boards, plank, timber or shingles but what have been inspected by one of the inspectors, shall forfeit and pay for every thousand feet so taken on board, the sum of one dollar and twenty-five cents, and for every thousand shingles the sum of sixty-two and an half cents ; all which forfeitures shall be recovered with costs in the manner and for the uses aforesaid.

VI. *And be it further enacted*, That no inspector of lumber shall appoint any deputy to purchase any lumber except for his own use, nor sell any lumber whatsoever on pain of forfeiting his office.

Inspectors not to trade in lumber.

VII. *And be it further enacted*, That the said inspectors shall be entitled to receive as a compensation for inspecting all boards, plank and scantling at the rate of thirty-seven and an half cents for every thousand feet superficial measure, except that in the city of New-York they shall be entitled to receive only at the rate of twenty-five cents, for every thousand feet superficial measure ; and that all the said inspectors shall be entitled to receive for square timber, at the rate of fourteen cents per ton, consisting of forty cubical feet, and for shingles at the rate of twenty cents for every bundle, the one half to be paid by the buyer and the other half by the seller.

Compensation of inspectors.

C H A P. LX.

*An ACT regulating certain Proceedings in Criminal Cases**

Passed 21st March, 1801.

I. **B**E it enacted by the People of the State of New-York, represented in Senate and Assembly, That in all cases of treason or felony, where the party indicted shall on being arraigned obstinately stand mute, or refuse to plead and be tried in due course of law, such obstinately standing mute or refusal to plead and be tried as aforesaid, shall be adjudged to be a denial of the facts charged in the indictment, and the trial shall thereupon proceed in like manner, and the record shall be in the same form, and the same judgment shall be given against the said party, if found guilty, as if such party on being arraigned had pleaded not guilty.

Prisoners, in cases of treason or felony standing mute or refusing to plead, deemed pleading not guilty.

II. *And be it further enacted*, That it shall not be necessary on the arraignment or trial of any person for treason or felony, to ask the prisoner how he will be tried, nor to charge the jury to inquire whether the prisoner fled or not, or what goods or chattels, lands, and tenements the prisoner at any time had.

Prisoner not to be asked how to be tried, nor jury to inquire whether he fled or had property.

III. *And be it further enacted*, That no conviction or attainder of any person for any offence specified in the act, entitled *An act declaring the crimes punishable with death or with imprisonment in the state prison*, except treason, shall hereafter work a forfeiture of goods, chattels, lands, tenements or hereditaments, or of any right therein ; and that all forfeitures to the people of this state in the nature of deodands, and in cases of suicide, and where any person shall flee from justice, shall be and hereby are abolished.

Forfeiture of estate, except for treason, abolished.

Benefit of
clergy abolish-
ed.

IV. *And be it further enacted,* That the privilege or benefit of clergy formerly allowed in criminal cases shall be forever abolished.

Proceeding
where a per-
son is struck
or poisoned in
one county,
and dies in
another.

V. *And be it further enacted,* That where any person hereafter shall be feloniously stricken or poisoned in one county and die of the same stroke or poisoning in another county, then an indictment thereof found by jurors of the county where the death shall happen, whether it shall be found before the coroner upon the sight of such dead body, or before the justices of the peace, or the justices or commissioners who shall have authority to inquire of such offence, shall be as valid in law as if the stroke or poisoning had been given in the same county where the party shall die. *And further,* That the courts of oyer and terminer and gaol delivery in the same county where such indictment at any time hereafter shall be taken; and the justices of the supreme court when such indictment shall be taken or removed before them, shall proceed upon the same in all points as they ought to do in case such felonious stroke or poisoning and death thereby ensuing, had happened in one and the same county. *And further,* That

Proceeding
where a per-
son is access-
ary in one
county to
murder and
felony com-
mitted in an-
other county;

where any murder or felony shall be committed in one county, and any other person shall be accessory in any manner to any such murder or felony in any other county, then an indictment found against such accessory for the same at any court of oyer and terminer and gaol delivery, or general sessions of the peace, in the county where such offence of accessory shall be committed, shall be as good and effectual, as if the said principal offence had been committed within the same county, where the same indictment against such accessory shall be found; and the courts of oyer and terminer and gaol delivery in the county where the offence of any such accessory so indicted shall be committed, shall, upon a certificate that the principal is attainted, convicted or otherwise discharged of the principal felony, to be given under the hand and seal of the clerk who has the custody of the records of the same, and which certificate such clerk is hereby required to give on application in writing from either of the judges of the said courts, proceed to try every such accessory in the county where the offence of such accessory was committed, in like manner, as if the principal offence and accessory had been committed in such county, and thereupon to give judgment and award execution according to law.

Accessaries
liable al-
though the
principal be
pardoned be-
fore attainted

VI. *And be it further enacted,* That if any principal felon shall be convicted of any felony, it shall be lawful to proceed against any accessory either before or after the fact, in the same manner as if such principal felon had been attainted thereof, notwithstanding any such principal felon shall be pardoned, or otherwise delivered before attainted; and every such accessory shall suffer the same

punishment if he be convicted, as he should have suffered if the principal had been attainted. *And further*, That it shall be lawful to prosecute and punish every person buying or receiving any stolen goods knowing the same to be stolen, as for a misdemeanor, although the principal felon be not convicted of the said felony, which shall exempt the offender from being punished as accessory to such felony after the fact, if the principal shall be afterwards convicted.

Receivers of stolen goods punishable for a misdemeanor or without convicting the principal

VII. *And be it further enacted*, That the justices of the supreme court shall have full power by their discretion to remand and send down, as well the bodies of all felons brought or removed into the supreme court, as the indictments against such felons, into the said counties, where the same felonies were or shall have been committed, and to command all justices of gaol delivery, justices of the peace, and all other justices and commissioners having authority to hear and determine the same felonies, to proceed and determine upon all the aforesaid felons and indictments so removed according to law, in such manner as the same justices of gaol delivery, justices of the peace or commissioners, or any of them, might have done if the said prisoners or indictments had never been brought in the supreme court.

Justices of the supreme court may send felons into the counties where the offences are committed.

VIII. *And be it further enacted*, That all manner of foreign pleas triable by the country, hereafter to be pleaded by any person arraigned upon any indictment for any treason or felony, shall be forthwith tried before the same justices before whom such person shall be arraigned, and by the same jurors of the same county that shall try the treason or felony, whereof he, she or they shall be so arraigned without any further delay in whatsoever county or place the matter of the same pleas be alledged.

Foreign pleas how to be tried.

IX. *And be it further enacted*, That every person arraigned for any crime punishable with death, or with imprisonment for life, shall be admitted on his trial to a peremptory challenge of twenty jurors and no more.

Peremptory challenge not to exceed twenty.

X. *And be it further enacted*, That no indictor of any person for any crime or offence whatsoever shall be put upon the inquest for the trial of such person, if he be challenged for that cause by the person to indicted.

No indictor to be on the petit jury.

XI. *And be it further enacted*, That every person who shall be arraigned or tried for any felony, shall be admitted to make any proof that he or she can produce by lawful witnesses who shall then be upon oath, for his or her defence in that behalf, and shall have the like process of the court where he or she shall be tried to compel his or her witnesses, to appear for him or her at such trial, as is usually granted to compel witnesses to appear against him or her.

Witnesses allowed to felons, and process to bring them in.

XII. *And be it further enacted*, That from henceforth the words *with force and arms* or any such words shall not

The words *with force and arms* not to

quisite in in-
dictments.

of necessity be put in any inquisition or indictment of treason, felony, trespass or any other offence, and that no party being hereafter indicted of any offence shall take any advantage by writ of error, plea or otherwise to annul or avoid any such inquisition or indictment because the words *with force and arms* or any such like words are not put into the said inquisition or indictment.

Party robbed
to be restored
to his goods
on prosecuting
the felon.

XIII. *And be it further enacted*, That if any felon do rob or take away any money, goods or chattels from any person, and the said felon be thereof indicted and found guilty, or otherwise attainted by reason of evidence given by the owner of the said money, goods or chattels so robbed or taken away, or by any other by his procurement, then such owner shall be restored to his money, goods or chattels, and the court before whom the felon shall be so convicted may award writs of restitution for the said money, goods or chattels.

Persons com-
mitted to bear
the charges
thereof, if
able ;

XIV. *And be it further enacted*, That every person who shall be lawfully committed to the common gaol in any city or county of this state, for any crime or misdemeanor, having means thereto, shall bear his or her own reasonable charges for conveying him or her to the said gaol, and the charges also of such as shall be appointed to guard him or her to the said gaol, and shall guard him or her thither. And if any such person so to be committed as aforesaid shall refuse at the time of his or her commitment, and sending to the said gaol to defray the said charges, or shall not then pay or bear the same, then any justice of the peace of the county shall by writing under his hand and seal, after conviction of the person so committed, give warrant to any constable of the town where such person so committed shall inhabit, or where he shall have any goods within the same city or county, to levy by distress and sale of the goods and chattels of the said person so to be committed, so much money as by the discretion of the said justice shall pay the charges of his or her conveying and sending to gaol ; and when any person not having goods or money within the city or county where he or she shall be taken sufficient to bear the charges of himself or herself and of those who convey him or her, is lawfully committed to gaol, then on application by any constable or other officer who conveyed him or her to gaol as aforesaid, to any justice of the peace for the same city or county, the justice shall upon oath examine into and ascertain the reasonable allowances to be made to such constable or other officer both for his expenses and trouble, the said allowances for trouble not to exceed six cents for each mile that he shall travel to convey the said offender to gaol as aforesaid ; and the said justice shall forthwith without fee or reward, by warrant

And recover-
able by dis-
tress and sale
of his goods :

If unable,
such charges
to be paid by
the city or
county.

under his hand and seal order the treasurer of the city or county to pay the same, which the said treasurer is hereby required to do as soon as he receives such warrant and shall have monies in his hands.

XV. *And be it further enacted*, That it shall be in the power of the court before whom any person shall have been tried and convicted of any larceny or other felony, at the prayer of the prosecutor and on consideration of his circumstances, in open court to order the treasurer of the city or county in which the offence shall have been committed, to pay unto such prosecutor such sum of money as to the same court shall seem reasonable, not exceeding the expences which it shall appear to the court the prosecutor was put unto in carrying on such prosecution, and making him a reasonable allowance for his time and trouble therein. And that when any poor person shall appear on recognizance in any court to give evidence against another accused of any larceny or other felony, it shall be in the power of the court at the prayer and on the oath of such person, and on consideration of his circumstances, in open court to order the treasurer of the city or county in which the offence shall have been committed, to pay such sum of money as to the said court shall seem reasonable, for his time, trouble and expence ; which order in either case the clerk of such court is hereby directed forthwith to make out and deliver to such prosecutor, upon being paid for the same the sum of twelve and an half cents and no more, and to such poor witness without fee or reward ; and the treasurer of such city or county is hereby required upon sight of any such order, or as soon after as he shall have monies sufficient in his hands, forthwith to pay to such prosecutor or witness, or other person authorized to receive the same, such sum of money so ordered to be paid as aforesaid.

The court may allow the prosecutor his expences, to be paid by the city or county ;

And also poor witnesses appearing on recognizance :

XVI. *And be it further enacted*, That the treasurer of each city and county shall be allowed in his accounts all such sums as he shall pay upon any such order as aforesaid, which sums shall be considered as part of the contingent charges of such city or county. And that the several treasurers may be enabled to comply with such orders, the supervisors of the several counties are hereby required to cause a sum sufficient for the purposes aforesaid, to be raised, levied and collected in their respective counties yearly, in the same manner as the contingent charges of the same counties are to be raised, levied and collected.

The county treasurers to be allowed such sums in their accounts.

XVII. *And be it further enacted*, That when any person shall be convicted of and fined for any crime or misdemeanor, the court may in their discretion allow such expences to witnesses and prosecutors out of the same fine, as such court shall judge reasonable, not exceeding the

Persons being convicted and fined, the court may allow the expences, not exceeding 25 cents, to wit-

offes & prosecutors to be paid out of the fine.

sum of twenty-five dollars ; and shall cause an entry thereof to be made in the minutes of the court, and the clerk in the estreat thereof shall mention the same, in order that the court of exchequer may know how much of the said fine is to be answered to the people of this state ; and when such fine is paid to the sheriff or other officer he shall pay such expences so allowed out of the same.

The party injured may settle with the offender in certain cases, and the public prosecution to cease.

XVIII. *And be it further enacted*, That in all cases where a person shall on the complaint of another be bound by recognizance to appear, or shall for want of surety be committed, or shall be indicted for an assault and battery or other misdemeanor, the injury and damage of the party complaining and not charged to have been done riotously, or with intent to commit a felony, or not being an infamous crime, and for which there shall also be a remedy by civil action, if the party complaining shall appear before the magistrate, who may have taken the recognizance or made the commitment, or before the court in which the indictment shall be, and acknowledge to have received satisfaction for such injury and damage, it shall be lawful for the magistrate in his discretion to discharge the recognizance, or supercede the commitment, and also to discharge the recognizance which may have been taken for the appearance of witnesses in such case, or for the court also in their discretion to order a *noli prosequi* to be entered on the indictment as the case may require, upon payment of costs ; *Provided always*, That this act shall not extend to any assault and battery or other misdemeanor committed by or on any officer or minister of justice.

Proviso.

Civil remedy not merged in the felony.

XIX. *And be it further enacted*, That in all cases of felony heretofore committed or which may hereafter be committed, it shall and may be lawful for any person or persons injured or aggrieved by such felony, to have and maintain his, her or their action against the person or persons guilty of such felony, in like manner as if the offence committed had not been felonious ; and in no case whatever shall the right of action of the party injured be deemed, taken or adjudged to be merged in the felony or in any manner affected thereby.

Appeals of felony abolished.

XX. *And be it further enacted*, That all appeals of felony shall be and hereby are abolished.

C H A P. LXI.

An ACT for regulating Elections.

Passed 24th March, 1801.

Elections by ballot :

I. **B**E it enacted by the People of the State of New-York, represented in Senate and Assembly, That all elections for governor, lieutenant-governor, senators and

members of assembly, shall be by ballot, and that such elections shall be held in the cities of New-York, Albany and Schenectady, by wards, and in all other parts of this state by towns, and that the last Tuesday of April in every year shall be the anniversary day on which such elections shall be held, and from which the same shall be continued by adjournment from day to day for three days successively, including the first.

By wards and towns :

On the last Tuesday of April yearly.

II. *And be it further enacted,* That the supervisors, assessors and town clerks of the several towns in this state, or a majority of them actually in office, shall from time to time, be the inspectors of such elections in their respective towns, and that in the cities of New-York, Albany and Schenectady, such inspectors shall be appointed by the common council of said cities respectively, at their usual place of meeting in each of the said cities, on the first Tuesday of April in every year, who then and there shall by plurality of voices elect from among the substantial freeholders actually resident in each ward of the said cities three persons for inspectors of such election then next to be holden in such ward.

Inspectors of election in the counties :

In the cities.

III. *And be it further enacted,* That the clerk of the senate shall annually, between the first days of January and March, inclose and send in writing under his hand to each of the sheriffs of the different counties of this state, a notification of the names of the senators for the district to which such county shall belong, whose seats will become vacant on the first Monday of July thereafter, and of the names of those, if any, whose seats may have become vacant by death or otherwise, and of the number of senators to be elected in such district at the then ensuing election, and also that a governor and lieutenant-governor, or a lieutenant-governor only, as the case may require, is or are then to be chosen ; and in case any vacancy shall happen in the office of any senator on or after the said first day of March and before the fifteenth day of April in any year, then the said clerk shall immediately thereafter give the like notification of the name of every senator whose seat shall so become vacant ; and in case of the death, inability or removal of such clerk out of this state, it shall be the duty of the secretary of this state, to make and send such notifications, and each sheriff shall without delay transmit a copy of such notification to one of the inspectors in each town or ward in his county, and also affix a copy thereof on the door of the court house in his county.

Clerk of the senate or secretary to notify sheriffs of the senators to be chosen, and also of choosing governor & lieutenant-governor.

Sheriff to notify inspectors.

IV. *And be it further enacted,* That each inspector, upon receiving such notification, shall immediately give notice thereof to the other inspectors of his town or ward, and the said inspectors or a majority of them, shall without delay convene together, and by writing under their hands, to be fixed up in at least five of the most public

Inspectors to give notice of the time and place of election.

places of such town or ward, give eight days notice of the time and place, or the times and places, which to them shall appear most convenient, for the electors within the same, at which such election for governor, lieutenant-governor, senators and members of assembly, or any of them shall be held; and at the time and place of opening such election the said inspectors shall publicly administer to each other and severally take the following oath, viz.

Oath of the
inspectors.

"I do solemnly and sincerely swear and declare, in the presence of Almighty God, that I will in all things well, faithfully, honestly and impartially, and according to the best of my knowledge and abilities, execute the office of inspector of this election, and that I will faithfully and impartially canvass and estimate the ballots taken at the same election, and certify a true and just statement of the same, according to my best understanding, and that if I shall discover any of the other persons who shall attend with me for the purpose aforesaid, conducting himself or themselves partially, unduly or corruptly in the premises, that I will divulge or discover the same, to the end that the person so offending may be brought to justice."

Inspectors to
appoint clerks

And further, That in each town or ward the inspectors shall appoint two or more competent clerks of such election, each of whom shall keep a poll list of the same, under the direction of the inspectors, and take the following oath to be administered by the said inspectors, to wit:

Clerk's oath.

"I do solemnly and sincerely declare and swear, in the presence of Almighty God, that I will faithfully, truly, honestly and impartially enter and keep the poll lists at this election, and in all things will faithfully, truly, honestly and impartially, according to the best of my knowledge and abilities, do, perform and fulfil my duty as a clerk thereof."

And the said inspectors shall preside at such election, and conduct and direct the same according to the regulations of this act, and be the returning officers thereof in manner hereinafter directed; and the inspectors and clerks being sworn as aforesaid, the said inspectors shall cause proclamation to be three times made as follows, viz.

Form of proclamation:

"HEAR YE! HEAR YE! HEAR YE! The poll of this election is opened, and all manner of persons attending the same are strictly charged and commanded, by the authority and in the name of the people of this state, to keep the peace thereof during their attendance at this election, upon pain of imprisonment."

When to be made.

Which proclamation shall be repeated at every subsequent opening of the poll after an adjournment thereof, and proclamation of every such adjournment, and of the closing thereof, shall also in like manner be made: *Provided always*, That the proclamation by which the same shall be closed, shall be preceded three hours before, by a proclamation notifying that the same will be so closed; and the

Proviso.

poll of every such election shall be open in the day time only between the rising and setting of the sun.

Poll open in the day time only.

V. *And be it further enacted,* That the poll lists for governor, lieutenant-governor and senators, or such of them as shall be to be chosen at any such election, shall be kept distinct and separate from those for members of assembly; and that no person shall vote at any such election, except in the town or ward in which he shall actually reside.

Poll lists for governor and senators how kept.

Persons to vote where they reside.

VI. *And be it further enacted,* That the mode of conducting every such election shall be as follows: Every person who shall be qualified according to the constitution of this state and this act, and offer himself to vote for governor, lieutenant-governor or senators, shall at such election openly deliver his ballot for governor, lieutenant-governor and senators, or such of them as shall be then to be chosen, to one of the inspectors, who shall receive the same in the presence of the other inspectors, which ballot shall be a paper ticket, containing the name of a person for governor, and the name of a person for lieutenant-governor, and the names of so many persons for senators as shall be then to be chosen in that district wherein the elector shall reside, or such and so many of them respectively as are then to be chosen, and such elector shall think proper to vote for, severally written upon the same paper ticket, and distinguishing who is voted for as governor or lieutenant-governor, when they or either of them are to be chosen, and who are voted for as senators, and the said paper ticket shall be so folded or closed as to conceal the writing thereon; and on receipt of every ballot or ticket for governor, lieutenant-governor and senators, or any of them, the inspectors shall cause the name of the elector to be entered in the books or poll lists for governor, lieutenant-governor and senators, or such of them as are then to be chosen, by all the clerks, and shall cause the ballot without suffering the same to be inspected, to be put into a box to be provided for the purpose of receiving the ballots for governor, lieutenant-governor and senators, or such of them as are then to be chosen, with a sufficient lock thereto; and which box shall be locked, and the key thereof kept during the election by one of the inspectors attending such election, to be appointed for the purpose by the major part of them; and a small hole shall be made in the lid or cover of the box, sufficient only to receive each ballot, and through which all the ballots shall be put into the box, and which box shall only be opened at the times hereinafter mentioned. *And further,* That every person who shall be qualified according to the constitution of this state and this act, and offer himself to vote for members of assembly, shall at such election openly deliver his ballot for members of as-

Mode of conducting elections for governor, lieutenant-governor, and senators;

For members of assembly.

sembly to one of the inspectors, who shall receive the same in the presence of the other inspectors, which ballot shall also be a paper ticket, containing the names of as many persons for members of assembly as are then to be chosen for the county wherein such elector shall then reside, or so many of them as such elector shall think proper to vote for, severally written on the same paper ticket, and the said paper ticket shall be so folded or closed as to conceal the writing thereon; and on receipt of every ballot or ticket for members of assembly, the inspector shall cause the name of the elector to be written in the books or poll lists for members of assembly by all the clerks, and shall cause the ballot, without suffering the same to be inspected, to be put into a box to be provided for the purpose of receiving the ballots for members of assembly, with a sufficient lock thereto, which shall be locked, kept and disposed of in the same manner as the box for receiving the ballots for governor, lieutenant-governor and senators above mentioned. *And further,* That on every adjournment of the poll, all the clerks books or poll lists shall be carefully compared in the presence of the inspectors, and any mistakes in either of them shall be corrected according to the judgment of a major part of the inspectors; whereupon the boxes shall be opened, the proper books or poll lists put into them respectively, and the boxes then locked with the books or poll lists therein, and the keys delivered to such one of the inspectors as the majority of them shall appoint; and the seal or seals of one or more of the inspectors shall be put upon the said boxes so as to cover the holes in the lids thereof; and the boxes shall then be delivered to such other of the inspectors attending such election as a majority of them shall direct, who shall carefully keep the same, and shall without suffering the same to be opened, or the said seal or seals to be broken or removed, deliver the same boxes in at the election table at the next opening of the poll, in the presence of all the spectators attending on the said election, when and where the seals shall be broken and the boxes opened, and the poll books or lists taken out and the boxes again locked, in order to proceed in the said election, which course shall be observed and pursued until the poll be closed.

How poll lists
to be disposed
of on adjourn-
ments.

Voters sus-
pected not to
be qualified,
or challenged,
to take an
oath.

VII. *And be it further enacted,* That whenever any person shall present himself to give his vote or ballot at any such election, as a freeholder qualified by the constitution of this state to vote for a governor or lieutenant-governor, and either of the inspectors shall suspect, or any other person entitled to vote at the same in such town or ward shall challenge him to be unqualified for the purpose, the inspectors shall tender and administer to him the following oath, to wit:

"I do solemnly and sincerely swear and declare, in the presence of Almighty God, that I am possessed of a freehold in my own right (or, in the right of my wife, as the case may be) of the value of two hundred and fifty dollars, within this state, over and above all debts charged thereon; and that I am an actual resident of the ward (or, town) of in the county of (as the case may be) and have not been before polled in any part of this state at this election."

Form of oath for electors of governor;

And that whenever any person shall present himself to give his vote for senators, and either of the inspectors shall suspect, or any person intitled to vote at the same election in such town or ward shall challenge him to be unqualified for the purpose, the inspectors shall tender and administer to him the following oath, to wit :

"I do solemnly and sincerely swear and declare, in the presence of Almighty God, that I am possessed of a freehold in my own right (or, in the right of my wife, as the case may be) of the value of two hundred and fifty dollars, within the county of in the district (as designated by the constitution of this state) over and above all debts charged thereon; and that I am an actual resident of the ward (or, town) of in this county, (as the case may be) and have not been before polled in any part of this state at this election."

For senators;

And that whenever any one shall present himself to give his vote or ballot for members of assembly only, and either of the said inspectors shall suspect, or any person entitled to vote for members of assembly in the same town or ward shall challenge him to be unqualified for the purpose, the inspectors shall tender and administer to him the following oath, viz.

"I do solemnly and sincerely swear and declare, in the presence of Almighty God, that I am and have been for six months next and immediately preceding this election, a freeholder and possessed of a freehold in my own right (or, in my wife's right, as the case may be) of the value of fifty dollars, in the county of (or, have for six months next and immediately preceding this election, rented a tenement of the yearly value of five dollars within the county of and have been rated and actually paid taxes to this state,) and that I am now an actual resident of the ward (or, town) of (as the case may be) and that I have not been polled before in any part of the said county at this election."

For members of assembly.

And in case any elector shall refuse to take the said oaths respectively when so tendered to him, he shall lose his vote at such election. Provided nevertheless, That nothing herein contained shall be construed to deprive the persons who were freemen of the city of New-York on the fourteenth day of October, in the year of our Lord one thousand seven hundred and seventy-five, or freemen of the city of Albany on the twentieth day of April, in the year of our Lord one thousand seven hun-

Electors refusing to take the oaths, to lose his vote.

Provido, as to the freemen of New-York and Albany.

dred and seventy-seven, and who shall be actually and usually resident in the said cities respectively, and who may refuse to take the oath last above contained, of the right of voting for members of assembly in the said cities, reserved to them by the seventh article of the constitution of this state : *And provided also*, That whenever any one shall present himself to give his vote or ballot as a freeman of the said city of New-York or city of Albany, for members of assembly, and either of the inspectors shall suspect him to be unqualified for the purpose, they shall tender to him the following oath, to wit :

Further proviso.

Form of oath for such freemen.

" I do solemnly and sincerely swear and declare, in the presence of Almighty God, that I now am and was a freeman of the city of New-York before the fifteenth day of October, in the year of our Lord one thousand seven hundred and seventy-five (or, a freeman of the city of Albany before the twenty-first day of April, in the year of our Lord one thousand seven hundred and seventy-seven, as the case may be,) and that I now am an actual resident in ward of the city of New-York (or, Albany, as the case may be,) and that I have not before been polled at this election in any part of this state."

And in case such elector shall refuse to take such oath, he shall lose his vote at the said election.

Oath to be tendered to disqualified Electors :

VIII. *And be it further enacted*, That at every such election the inspectors shall tender and administer to each elector presenting himself to vote at such election, if any of them shall suspect that such elector is not, or if any person entitled to vote at such election in the same ward or town shall challenge such elector not to be well affected to the government of this state, the following oath, to wit :

Form of the oath :

" I do solemnly, without any mental reservation or equivocation whatsoever, swear and declare, and call God to witness, that I do abjure and renounce all allegiance and subjection to the king of Great-Britain, and to all and every other foreign king, prince, potentate and state whatsoever, and that I will bear true faith and allegiance to the state of New-York as a free and independent state ; and that I will in all things, to the best of my knowledge and ability, do my duty as a good and faithful citizen of the said state ought to do."

Penalty on an Inspector for receiving a ballot without such oath, &c.

And if any elector shall refuse to take the said oath, he shall not be permitted to vote at such election. And if at any such election an inspector shall receive the vote or ballot of any elector, who upon being tendered the said oath shall refuse to take the same, such inspector shall for each offence forfeit the sum of twelve dollars and fifty cents to any person who will sue for the same, to be recovered with costs ; *And further*, the said inspectors are hereby required to administer the said oath to any elector who shall voluntarily offer to take the same.

IX. *And be it further enacted*, That after finally closing the poll of any such election, the inspectors of the several towns and wards, shall proceed without delay publicly to open the boxes containing the said ballots, and first count the said ballots, unopened, and if the number of ballots in any of the said boxes shall exceed the number of electors contained in the poll lists respectively, the said inspectors shall draw out and destroy unopened so many of the said ballots as shall amount to the excess, and such numbers agreeing, or being so made to agree, the said inspectors shall proceed to canvass and estimate the said ballots, and if two or more ballots are found folded or rolled up together, none of the ballots so folded or rolled shall be estimated, and the said inspectors shall complete the said canvass and estimate on the day subsequent to the closing the poll or sooner, and thereupon shall set down in writing the names of the several candidates voted for at any such election, either as governor, lieutenant-governor or senators, with the number of votes, in words at full length, given for any such candidate at any such election for either of the said offices, and shall certify and subscribe their own proper names thereto, and by one of their number to be appointed for that purpose by a majority of them, shall within eight days thereafter, cause such statement or certificate to be delivered to the clerk of the county in which such ballots shall be taken, and a like certificate subscribed as aforesaid to the clerk of the town in which such ballots shall be taken, to be by him entered of record in a book to be by him provided for that purpose; and the clerk of such county shall enter of record in a book to be by him provided for that purpose, such statement or certificate so delivered him as aforesaid, and shall within twenty days thereafter, deliver a transcript certified by him of all such certificates so by him received, or cause the same to be delivered to the secretary of this state, by a special messenger to be by him appointed for the purpose; to which messenger the clerk shall administer the following oath, to wit:

Inspectors to canvass the votes for governor, lieutenant-governor and senators.

And certify the result to the clerk of the county & of the town.

Clerk of the county to forward the certificates to the secretary of state.

"I do solemnly and sincerely swear and declare, in the presence of Almighty God, that I will faithfully to the best of my ability and without delay, deliver in at the secretary's office, all such certificates of the election of the county of _____ as shall be delivered to me by the clerk of said county for that purpose."

Oath of the special messenger.

And for which service the said clerk or messenger shall be paid at the rate of twenty-five cents for each mile in going only, to be computed from such clerk's office to the secretary's office, and to be paid out of the treasury of this state on the warrant of the comptroller: And the inspectors on closing the poll at any such election as aforesaid, shall proceed in like manner, without delay,

Inspectors to canvass the votes for members of assembly.

And certify
the result to
the clerks of
the town and
county.

Clerk of the
county to de-
termine and
certify the
members
elected.

Clerk's ex-
pences and
services how
paid.

Poll books &
ballots when
to be destroy-
ed.

Inspectors to
imprison dis-
orderly per-
sons.

Secretary,
comptroller
and treasurer
to determine.

to canvass and estimate the ballots given for every person as member of assembly at such election; and after making such canvass and estimate shall set down the names of every such candidate, with the number of votes given for each candidate, in words at full length, and after certifying and subscribing their proper names thereto, shall within twelve days after, cause such statement or certificate of such canvass or estimate to be delivered as aforesaid to the clerk of the county, and a like statement or certificate to the clerk of the town in which such ballots shall be taken, to be by them respectively entered of record as aforesaid in books by them to be provided as aforesaid; and the clerk of such county shall without delay, after the day appointed for delivering to him such certificate as aforesaid shall have elapsed, calculate and ascertain the aggregate amount or whole number of votes given for the respective candidates voted for as members of assembly at any such election, and shall thereupon determine conformable to such statements or certificates delivered him as aforesaid, upon the person or persons duly elected by the greatest number of votes as members of assembly for such county; and shall after entering such determination of record cause to be delivered to each of the persons so found to be elected as members of assembly a brief certificate of such election; and the respective clerks of counties shall exhibit their accounts for services performed and expences incurred by virtue of this act, except such as are herein before provided for, to the supervisors of their respective counties, who shall examine, audit and allow the same, and cause the amount thereof to be levied, collected and paid in the same manner as the other contingent charges of such counties are by law directed to be levied, collected and paid. *And further,* That immediately upon the said inspectors at any such election making and subscribing such statement or certificate as aforesaid, they shall destroy all the poll books and ballots made and taken at any such election.

X. *And be it further enacted,* That if any person shall be guilty of any disorderly conduct at any such election, or during the time of the canvass and estimate aforesaid, or of using indirect, sinister or corrupt means to influence any elector or electors in giving in his or their ballots, the major part of the inspectors at such election, are hereby authorized and required to commit the offender to the gaol of the county, there to remain for a space not exceeding thirty days, and all sheriffs, under-sheriffs, constables and gaolers, are hereby strictly charged and required to aid and obey the inspectors herein.

XI. *And be it further enacted,* That the secretary of this state shall without delay, after receiving such transcripts from the clerks of the respective counties in this state,

enter the same of record in his office, and on or before the eighth day of June, in the same year, in conjunction with the comptroller and treasurer of this state, whose duty it shall be to give their attendance at the secretary's office on a day to be notified to them for that purpose by such secretary, proceed to calculate and ascertain the aggregate amount or whole number of votes given at such election for governor, lieutenant-governor, or for senators; and the said secretary, comptroller and treasurer shall thereupon, and within six days after, such meeting, determine conformable to such transcripts, the persons duly elected by the greatest number of votes to either of the said offices, and without delay, make and subscribe with their proper names and hand writing, a certificate of such determination, and enter the same in a book to be kept for that purpose in the secretary's office, and without delay cause to be delivered a true copy thereof so subscribed as aforesaid to each of the persons so elected, and to the person administering the government of this state, and shall also cause such certificate to be published in one of the public newspapers printed in each of the great senatorial districts of this state, with a statement subjoined thereto and subscribed by the said secretary, comptroller and treasurer, of the votes given for every person voted for at such election in the several counties of this state for any of the said offices, as by the said transcripts returned by the clerks of the said counties respectively may appear.

certify and publish the persons chosen for governor, lieutenant-governor & senators:

XII. *And be it further enacted*, That if either the said secretary, comptroller or treasurer shall neglect, or by death or otherwise be prevented from discharging the duties enjoined on them by this act, then it shall be lawful for the other two of the said officers to perform the same; and if any two of the said officers shall neglect, or be prevented as aforesaid from discharging the said duties, in that case, it shall be lawful for any two of the justices of the supreme court of judicature of this state, and they are hereby required, on notice to be given them for that purpose by the person administering the government of this state, to attend without delay at the said secretary's office, and in conjunction with either the said secretary, comptroller or treasurer, who may convene with them for that purpose, to do and perform the respective duties enjoined upon the secretary, comptroller and treasurer of this state by virtue of this act, and all questions which may arise in the canvass, estimate or calculation of the votes given at any such election under this act, shall be determined by the opinion of a majority of the persons composing the board of canvass, estimate or calculation, as the case may be; and the said secretary, comptroller, treasurer, or justices of the supreme court, as the case

if they be prevented, the judges of the supreme court to do the same.

Oath of the persons who shall so deter-

swine and certify.

may be, shall before they enter upon the said duties enjoined upon them, severally take and subscribe before one of the justices of the said supreme court, or a master in chancery, an oath that he will in all things faithfully, honestly and impartially discharge the duties enjoined upon him by the act, entitled *An act for regulating elections*, which said oath shall be entered of record in the secretary's office.

Voters for a senator in the room of one dead or removed, need not designate.

XIII. *And be it further enacted*, That when a senator is to be chosen at any election, in the room of one dead, or removed from office, it shall not be necessary for any elector to designate on his ballot whom he votes for as senator in the room of the person deceased, or removed from office, but the person who shall have the greatest number of votes for senator shall be considered as elected for the longest time, and so successively until each vacancy be filled without regarding any designation or the order of placing the names of the persons voted for, upon any of the ballots taken at such election.

When the persons chosen shall enter upon their offices

XIV. *And be it further enacted*, That the governor and lieutenant-governor so elected, having respectively taken their oaths of office, shall enter upon the execution of their offices on the first day of July next after their election, and the senators and members of assembly so elected shall give their attendance, and take their respective seats in senate and assembly, on the first Monday of July after their election, or the next meeting of the legislature thereafter.

Mortgagors & mortgagrees when qualified to vote.

XV. *And be it further enacted*, That every mortgagor while he continues in the occupation of the premises mortgaged, and every mortgagee of a real estate to him and his heirs after he obtains possession of the mortgaged premises; and every person possessed of a freehold in right of his wife, shall be deemed and esteemed a freeholder within the meaning of this act; but that no person under the age of twenty-one years, nor any one not being a citizen of this state or of the United States, or of one of them, shall have a right to vote at any such election.

Persons not qualified.

Penalty for neglect of duty, or corrupt conduct in the public officers

XVI. *And be it further enacted*, That if the said secretary, or comptroller or treasurer, or any justice of the supreme court, or any clerk or sheriff of any of the counties of this state, or any of the said inspectors shall be guilty of any wilful neglect of the duties required of them by this act, or of any partial or corrupt conduct in the execution of the same, and be thereof convicted, every of them so offending and convicted, shall forfeit and pay for every such offence the sum of five hundred dollars, to be recovered by action of debt, or by information in any court of record, the one moiety thereof to the use of any person who shall prosecute for the same, and the other moiety thereof to the use of the people of this state; and

How recovered.

if the prosecutor in any such suit shall prevail, he shall likewise recover his costs of suit against the person convicted, but if the person so proceeded against shall be acquitted, he shall recover double costs against the prosecutor; and no process shall issue to bring in the party accused until bond be filed in the office of the clerk of the court out of which such process shall issue, in the penalty of five hundred dollars with two sufficient freeholders as sureties such as the court shall approve, to secure the defendant double costs, to become due on a discontinuance, withdrawing of the suit, or an acquittal or neglect to bring the same to trial within five terms after the appearance of the defendant to answer the same. *And further,* That every person so convicted shall also suffer the same pains and penalties as in cases of wilful and corrupt perjury, and shall from and after such conviction be utterly disqualified to hold or enjoy any place or office in this state.

Further punishment.

XVII. *And be it further enacted,* That whoever shall by bribery, menace, or other corrupt means or device whatsoever, either directly or indirectly, attempt to influence any elector of this state in giving his vote or ballot, or deter him from giving the same at any election within this state by virtue of this act, and shall thereof be convicted, such person so offending and convicted, shall forfeit and pay for every such offence the sum of one thousand two hundred and fifty dollars, to be sued for and recovered by any person, and in the manner and under the restrictions above prescribed in actions to be brought for neglect of duty or corrupt conduct; one moiety of which penalty shall be recovered to the use of the person prosecuting for the same, and the other moiety thereof to the use of the people of this state; and on such conviction the person convicted shall forever thereafter be utterly disqualified to hold, exercise or enjoy any office or place of trust or profit within this state.

Penalty on persons guilty of bribery or corruption:

How recovered and applied

Further punishment.

XVIII. *And be it further enacted,* That no officer or other person shall call out or order any of the militia of this state to appear or exercise on any day, during any election to be held by virtue of this act, or within ten days previous thereto, except in cases of invasion or insurrection, on pain of forfeiting the sum of five hundred dollars for every such offence, to be recovered by any person who will sue for the same with costs, the one moiety of such penalty to his own use, and the other moiety thereof to the use of the people of this state.

Penalty on calling out the militia at or near the election:

How recovered.

XIX. *And be it further enacted,* That it shall not be lawful for any officer or minister of justice to serve any civil process in any city or town in this state, on any person entitled to vote at any election to be held by virtue of this act, between the day preceding such election and the day subsequent to the closing of the poll thereof in such town or ward.

Voters, when exempted from civil process.

Hudson a
town within
this act.

XX. *And be it further enacted, That the city of Hudson shall be considered as a town for all the purposes contemplated by this act.*

C H A P. LXII.

An ACT to prevent Injury by Dogs.

Passed 24th March, 1801.

Penalty on
owners of
dogs that kill
or wound
sheep :

Or chase
them :

Any person
may kill such
dogs.

Provido.

Owners of
dogs that at-
tack travel-
lers, ordered
to kill them :

Under a pen-
alty.

Tax on dogs
in the county
of Richmond.

I. **B**E it enacted by the People of the State of New-York, represented in Senate and Assembly, That if any dog shall kill or wound any sheep or lamb, the owner or possessor of such dog shall pay to the owner of such sheep or lamb the value thereof, to be recovered with costs of suit before any justice of the peace of the county where such offence shall be committed ; and if the owner or possessor of such dog, or of any dog which shall chase or worry any sheep or lamb, shall not within forty-eight hours after notice of any such act, cause such dog to be killed, he shall forfeit the sum of two dollars and fifty cents, and the further sum of one dollar and twenty-five cents for every forty-eight hours thereafter until such dog shall be killed; which forfeitures shall be for the use of any person who shall sue for the same, to be recovered with costs of suit in manner aforesaid, unless it shall appear to the satisfaction of the justice before whom any suit for the recovery thereof shall be brought, that it was not in the power of the owner or possessor of such dog to kill the same. *And further, That it shall be lawful for any person who shall see any dog chase, worry or wound any sheep or lamb, to kill such dog ; Provided however, That nothing herein contained, shall be construed to prevent any shepherd or other person from making use of dogs to drive sheep under his care or owned by him.*

II. *And be it further enacted, That if any dog shall attack any person peaceably travelling on any high way, or shall attack any horse in any carriage, or on which any person is mounted, and complaint thereof be made to any justice of the peace, if it shall appear to the justice that such complaint is well founded, and that such dog is dangerous, it shall then be the duty of such justice to order the owner or possessor of such dog to kill him, and if he shall not within forty-eight hours after having received such order cause such dog to be killed, he shall forfeit the sum of two dollars and fifty cents, and the further sum of one dollar and twenty-five cents for every forty-eight hours thereafter until such dog be killed, to be recovered and applied in manner aforesaid.*

III. *And be it further enacted, That in the county of Richmond there shall be the following additional provisions, to wit: The owner or possessor of any dog of three*

months old and upwards, kept by any one person or family, shall pay a yearly tax for the same of twenty-five cents, and if more than one dog be so kept, seventy-five cents for the second dog, and one dollar and fifty cents for every dog above the number of two, and it shall be lawful for the assessors of each town in the said county yearly, at the time of making their annual assessments, to enter in a book to be kept for that purpose the name of every person in their respective towns owning or keeping any dogs, and the number thereof, and it shall be the duty of such assessors to deliver an abstract from the said books to the collector of each town, with directions for collecting the tax aforesaid on the same, and the said collectors shall collect such tax and pay the same as herein after directed.

IV. *And be it further enacted,* That if the owner or possessor of any one or more dogs shall neglect or refuse to pay the tax on the same as aforesaid, within twenty days after demand thereof made by the collector, such collector shall sue for and recover the same with costs before any justice of the peace of the county, and every person in possession of, or who shall suffer any dog to remain about his house for the space of twenty days before demand made by the collector as aforesaid, such person shall be deemed the owner of such dog and liable to pay the tax for the same, and such person may lawfully kill such dog if no other person within the said twenty days shall appear to claim him. Tax how collected.

V. *And be it further enacted,* That the several collectors aforesaid may retain out of the money so to be collected, five per cent as a compensation for their trouble, and shall pay the residue thereof to the treasurer of the said county of Richmond, to be disposed of by the supervisors of the said county, by warrant upon the said treasurer, towards satisfying such damages as may arise in any year from dogs killing or injuring sheep, and the residue of the said tax, if any, after such damages are satisfied, shall be paid to the overseers of the poor of the respective towns in the said county, in proportion to the tax so collected in each town, towards the support of the poor thereof. *And further,* If any collector aforesaid shall neglect or refuse to do any thing herein before required of him to do, he shall for every offence forfeit and pay the sum of twelve dollars and fifty cents, to be recovered by action of debt with costs before any justice of the peace of the said county by any person who shall sue for the same, the one half when recovered to belong to the prosecutor and the other half to be applied to the uses aforesaid. Tax how applied.

VI. *And be it further enacted,* That when any person within the said county of Richmond shall sustain any damage by any dog, by killing or hurting any sheep belonging to him, Penalty on collectors for neglect of duty.
Damages done by dogs in the county of Richmond.

How assessed
and paid :

ing to him, he may apply to any two fence viewers of the town in which he resides, and if it shall appear to their satisfaction, on view of the sheep, that the same was killed or hurt by one or more dogs only, they shall so certify in writing, and also the value of the sheep or damage sustained, and the number killed or hurt, which certificate signed by them shall be a sufficient voucher to the supervisors of the said county for paying the value of the sheep or damages therein expressed : *Provided however,* That if the owner or possessor of any such dog be known, the party injured shall demand satisfaction of him, and if he neglect or refuse to kill such dog and to make such satisfaction, the party injured shall get the value of the sheep or damages certified as aforesaid, and may thereupon recover the same with costs of suit of the owner or possessor of any such dog before any justice of the peace of the said county, or other court having cognizance thereof.

How recovered
of the owner.

Any person
may kill dogs
that chase
sheep.

VII. *And be it further enacted,* That if any person shall see any dog chase, worry or wound any sheep, it shall be lawful for him to kill every such dog, unless the same be done by permission of the owner of such sheep.

C H A P. LXIII.

An ACT to regulate the Culling of Staves and Heading.

Passed 24th March, 1801.

Merchantable
staves and
heading de-
scribed.

I. **B**E it enacted by the People of the State of New-York, represented in Senate and Assembly, That no staves or heading shall be exported out of this state, to any foreign market, but such as shall be culled by cullers as herein after directed : That all butt staves shall be made of good white oak timber, and shall be of the following dimensions : The long butts shall be five feet six inches long, the short butts four feet six inches long, and both at least five inches broad when dressed, clear of sap ; two inches thick on the thinnest edge, and not more than two and an half inches thick in any place ; and shall be regularly split with the grain of the wood, and free from twist, and to be otherwise good and sufficient ; That all pipe staves shall be made of good white oak timber, and shall be four feet six inches long, and shall work three inches broad when dressed, clear of sap, and shall be three quarters of an inch thick on the thin edge regularly split with the grain of the wood, and shall not have more than six worm holes, and be otherwise good and sufficient ; That all white oak hoghead staves shall be made of good timber, and shall be three feet six inches long, and shall work three inches broad, when dressed clear of sap, and shall be three quarters of an inch thick on the thin edge, regular-

by split with the grain of the wood, and shall not have more than four worm holes, and be otherwise good and sufficient ; That all barrel staves shall be two feet eight inches long, and shall work three and an half inches broad when dressed, clear of sap, and shall be three quarters of an inch thick on the thin edge, regularly split with the grain of the wood, and not more than four worm holes, and otherwise good and sufficient ; That all heading shall be made of good white oak timber, and shall be two feet eight inches long, and shall not be less than six inches broad, clear of sap, three fifths of which shall be fit for middle pieces, and shall not be less than three fourths of an inch thick on the thin edge, and be otherwise good and sufficient ; That all red oak hoghead staves shall be three feet six inches long, three inches and an half broad, including sap, and shall be three quarters of an inch thick on the thin edge.

II. *And be it further enacted*, That the person administering the government of this state, by and with the advice and consent of the council of appointment, shall as often as may be necessary appoint an inspector general of staves and heading for the city and county New-York, who, before he enters on the execution of the duties of his office, shall take and subscribe the following oath or affirmation, before the mayor or recorder of the said city :

Inspector general of staves and heading to be appointed in N. York :

" I do solemnly swear (or, affirm) that I will truly, faithfully and impartially, according to the best of my ability, perform the duty of inspector general of staves and heading, according to law, without any wilful omission, neglect or delay whatsoever."

His oath :

And the said inspector general is hereby authorized and required to superintend the cullers of staves and heading within the said city and county, in order that the laws relative thereto may be duly executed ; and the said cullers are required to follow such instructions and directions as they or any of them may receive from time to time from the said inspector general, in relation to the duties required of them by law, and shall as often as once in every month make a return to him of the quantity of staves and heading which they cull, and of whom, specifying the different kinds ; and the said inspector general is hereby authorized and empowered to displace any of the said cullers, who shall in his opinion act inconsistently with the trust reposed in them, from negligence, incapacity, mal-practice or any other cause, and the said inspector general shall appoint some fit person to act in the room of the person so displaced, until the pleasure of the council of appointment be known ; and in case any of the said cullers shall die or resign, the said inspector general shall appoint some fit person to supply the vacancy, until the pleasure of the council of appointment be known ; and it

His powers.

Penalty for
obstructing
him.

be and hereby are forfeited, and the proceeds thereof shall be applied as herein after directed ; and if any master, owner or consignee of any such vessel, or any other person, shall by threats or violence prevent the said inspector general from entering on board any such vessel to make such search, or shall menace or disturb him while on board, and thereby prevent or attempt to prevent his performing the duties of his office, every person so offending shall forfeit the sum of fifty dollars for every such offence, to be recovered by action on the case in the name of the chamberlain of the city ; which when recovered shall be applied as penalties are to be applied as herein after directed.

Cullers, except in New-York, to search vessels by order of a justice.

IX. *And be it further enacted*, That except in the city and county of New-York, the said cullers and every of them, shall have full power and authority by virtue of this act, and on suspicion that any slaves or heading, which have not been culled, or which have been condemned as aforesaid, shall be shipped in any ship or other vessel for exportation, to apply to any justice of the peace, and on oath to assign to such justice the causes of such suspicion ; and if the said justice shall think the said suspicion well grounded, he shall issue his warrant to the said culler or cullers, to enter on board any ship or vessel whatsoever, within any harbor, port or river within the county of which he is a culler, to search for and make discovery of any slaves or heading shipped or shipping on board any such vessel for exportation immediately from thence to any foreign market ; and if the said culler on such search, discover any slaves or heading shipped on board any such vessel, that have not been culled by one of the cullers appointed by virtue of this act, or shall find on board any slaves that have been culled out or condemned, such culler shall apply to one of the nearest justices of the peace, who is hereby required to issue his warrant directed to some peace officer or officers, commanding him or them to enter on board such vessel, having on board such condemned or uninspected slaves or heading, and cause the same to be relanded, and delivered to the owner or owners thereof, upon his or their paying the expence of such search and relanding.

Justice, by warrant, to cause slaves condemned or uninspected to be relanded

Penalty for shipping slaves not inspected,

X. *And be it further enacted*, That if any person shall ship on board any vessel for exportation out of this state, any slaves or heading to any foreign market, except such as have been viewed and examined by some one of the cullers appointed by virtue of this act, in the city, county or town where such slaves or heading were exported from, the master of such vessel shall forfeit and pay the sum of two dollars and fifty cents for every thousand so taken on board ; and the owner or proprietor thereof the sum of five dollars for every thousand so shipped on board for ex-

portation, to be recovered with costs of suit by any person who will prosecute for the same, in any court having cognizance thereof. *And further*, That if any person shall ship on board any ship or vessel for exportation to any foreign market, any slaves or heading that have been condemned, or shall mix the same with any slaves or heading that have been culled, every such person upon due proof thereof, shall forfeit and pay the sum of five dollars for every thousand condemned slaves or heading so shipped on board or mixed, to be recovered in manner aforesaid.

Or condemned.

XI. *And be it further enacted*, That it shall be the duty of the said inspector general to make reports annually to the person administering the government of this state, to be laid before the legislature, and in such report he shall set forth whether any, and if any, what amendments are proper to be made to the laws relative to the culling of slaves and heading, and likewise what number of the respective kinds of slaves and heading have been culled in the city of New-York, in the year for which the said report may be made.

Inspector general annually to report.

XII. *And be it further enacted*, That one moiety of the forfeitures to be recovered by virtue of this act, shall be paid to the overseers of the poor in the city or town where the offence shall be committed, for the use of the poor thereof, and the other moiety thereof to such person as will sue for the same as aforesaid.

Forfeiture how applied.

C H A P. L X I V .

An ACT for regulating the Election of Representatives for this State in the House of Representatives of the Congress of the United States.

Passed 24th March, 1801.

I. **B**E it enacted by the People of the State of New-York, represented in Senate and Assembly, That for the purpose of electing representatives in the house of representatives of the congress of the United States, this state shall be and hereby is divided into ten election districts, which shall be known and numbered as follows; The counties of Suffolk, Queens, Kings and Richmond shall compose the first, the city and county of New-York except the seventh ward shall compose the second, the seventh ward of the said city and the counties of Westchester and Rockland shall compose the third, the counties of Orange, Ulster, Delaware and Greene shall compose the fourth, the county of Dutchess shall compose the fifth, the counties of Columbia and Rensselaer shall compose the sixth, the counties of Saratoga, Washington, Essex and Clinton shall compose the seventh, the city and

The ten election districts for representatives to congress, described.

county of Albany and the county of Schoharie shall compose the eighth, the counties of Montgomery, Herkimer, Oneida, and the towns of Cazenovia, Sherburne, Deruyter, Hamilton, Brookfield and Sangerfield in the county of Chenango, shall compose the ninth, and the counties of Otsego, Onondaga, Cayuga, Tioga, Ontario, Steuben and the residue of the said county of Chenango shall compose the tenth district.

Time of holding the elections.

Qualifications of the elected,

And of the electors.

Manner of conducting such elections

And of canvassing the ballots, and determining the persons chosen,

And of notifying such determination.

Governor to appoint special elections to supply vacancies,

II. *And be it further enacted*, That the next general election for such representatives shall be held on the last Tuesday of April in the year of our Lord one thousand eight hundred and two, and the subsequent general elections for such representatives on the last Tuesday of April in every second year thereafter, and that at every such election a person who shall have attained the age of twenty-five years and have been seven years a citizen of the United States, and who shall then be an inhabitant of this state shall, in each of the said districts, be chosen by the inhabitants of such district, qualified to vote for members of the assembly of this state, and the person having the greatest number of votes in any district shall be the representative chosen therein; and that all such elections shall be notified, held and conducted by the same inspectors, and in the same manner and with the like powers as the elections for members of the assembly of this state; and the ballots to be taken at any such election for such representatives shall be canvassed and estimated, certified, returned and calculated, and the result thereof determined in the same manner, and by the same persons as is provided with respect to the ballots taken for governor, lieutenant-governor and senators by the act, entitled *An act for regulating elections*, and the persons who shall so determine the same, shall in like manner without delay make and subscribe with their proper names and hand writing a certificate of such determination, and enter the same in a book to be kept for that purpose in the said secretary's office, and deliver or cause to be delivered a true copy of the said certificate to each of the persons so elected, and another copy thereof subscribed as aforesaid to the house of representatives of the congress of the United States of which such persons shall be elected members at their first meeting thereafter, and shall also cause a copy of such certificate to be published in one of the newspapers printed in each of the said districts, with a statement of the votes given for every person at such election.

III. *And be it further enacted*, That in case of any vacancy, by death or otherwise, in the said office of representative between any of the said general elections, it shall be the duty of the person administering the government of this state, by proclamation to give notice thereof, and therein specify in which of the said districts the person is

to be elected to fill such vacancy, and appoint a day not less than forty nor more than sixty days from the day of the publication of such proclamation for holding an election in such district to fill such vacancy, and cause a copy of such proclamation to be delivered to the sheriff of every county belonging wholly or in part to such district, and every such sheriff shall thereupon give notice in writing of such election to one of the said inspectors of elections in each town or ward of such district in his county, within eight days after receiving such proclamation, and each of the said inspectors shall immediately give notice thereof to the other inspectors of the same town or ward, and thereupon the inspectors of every such town or ward, or the major part of them, shall without delay convene together, and by writing under their hands, to be fixed up in at least five of the most public places in such town or ward, give eight days notice of the time and place, or times and places of holding such election within the same. And at every such election a person qualified as aforesaid shall be elected in such district to fill such vacancy by the inhabitants thereof qualified to vote as aforesaid; and such election shall be held and conducted, and the ballots thereof canvassed and estimated, certified, returned and calculated in the same manner, by the same persons respectively, and within the same time as in the case of a general election for such representatives, and the result thereof shall be determined in like manner by the same persons after twenty-eight and within thirty-five days from the day appointed by the proclamation for holding such election, and the like certificate of the person elected shall be made and subscribed and entered in the said book in the secretary's office, and copies thereof delivered and published, with the like statement of the votes as in the case of a general election of such representatives.

And sheriffs to give notice thereof:

Duty of the inspectors thereon.

How such elections to be conducted and the result determined.

IV. *And be it further enacted*, That if any person shall by bribery, menace, or other corrupt means, directly or indirectly attempt to influence any elector in giving his vote or ballot, or attempt to deter him from giving the same at any such election, or if any officer or other person shall call or order any of the militia of this state to appear or exercise at any time during such election, or within ten days before the ordinary and established days of holding such elections, except in cases of invasion or insurrection, or if any person shall be guilty of any partial or corrupt conduct in any of the duties required of him by this act, or shall wilfully neglect or refuse to perform the same, every person so offending shall be liable to the same pains and penalties, and incur the same forfeitures, as are inflicted in such cases respectively by the act, entitled *An act for regulating elections*, and to be recovered and applied in the manner therein directed.

Penalty on persons guilty of bribery or corruption,

Or for ordering out the militia.

Or guilty of neglect of duty, or corrupt conduct as officers.

Civil process
not to be served
on voters.

And further, That it shall not be lawful for any officer or minister of justice to serve any civil process in any city or town on any person entitled to vote at any election to be held by virtue of this act, between the day preceding such election and the day subsequent to the closing of the poll thereof.

C H A P. LXV.

An ACT to prevent unjust Imprisonment, by securing the Benefit of the Writ of Habeas Corpus.

Passed 24th March, 1801.

Duty of the-
riffs and
others on re-
ceiving a
writ of habeas
corpus :

I. **B**E it enacted by the People of the State of New-York, represented in Senate and Assembly, That when any person shall bring any writ of habeas corpus directed to any sheriff, gaoler or other person, for any person in his custody, and the writ shall be served upon such officer or other person, or left at the prison with any under officer of the same, the person on whom the writ shall be so served, or with whom it shall be so left, shall (unless the person so in custody be committed for treason or felony, plainly and specially expressed in the warrant of commitment,) upon payment or tender of charges of bringing the said prisoner, to be ascertained by the court or judge awarding the same, and indorsed on such writ, not exceeding twelve and an half cents per mile, and upon security given by his own bond, to pay the charges of carrying back the prisoner if remanded, and that he will not escape by the way, make return of such writ, and cause to be brought the body of such prisoner before the chancellor or supreme court, or any judge of the same, before whom such writ is returnable according to the command thereof, and certify the true cause of his imprisonment within three days thereafter, unless the commitment of such person be in a place beyond the distance of twenty miles from the place where such court or person resides ; and if beyond the distance of twenty and not above one hundred miles, then within the space of ten days, and if beyond the distance of one hundred miles, then within the space of twenty days after delivery of the writ as aforesaid, and not longer.

Time allowed
to return the
same.

Penalty on
disobeying
the writ.

II. *And be it further enacted, That if any person whose duty it is made as aforesaid, shall neglect or refuse to make the return and obey the said writ as aforesaid, according to the command thereof within the respective times aforesaid, or upon demand made by the prisoner, or any one on his behalf, shall refuse to deliver to the person demanding, a true copy of the warrant of commitment and detainer of such prisoner, every such person*

so offending, shall for the first offence forfeit to the party grieved two hundred and fifty dollars, and for the second offence five hundred dollars, and shall if an officer, be incapable to hold his said office.

III. *And be it further enacted,* That all such writs shall be signed by the person awarding the same, and indorsed with these words, *by the statute*; and if any person be imprisoned as aforesaid in vacation time, it shall be lawful for every such person (other than persons convicted or in execution by legal process, or committed for treason or felony, plainly and specially expressed in the warrant of commitment,) to apply in person or by any one on his behalf, to the chancellor, or any judge of the supreme court, and the chancellor or judge to whom application shall be so made, shall upon view of a copy of the warrant of commitment, or upon oath that such copy is denied, upon request in writing by such prisoner, or by any one on his behalf, attested and subscribed by two witnesses, allow an *habeas corpus* under the seal of the court whereof he shall be chancellor or judge, to be directed to the officer or person in whose custody such prisoner shall be, returnable immediately before such chancellor or judge; and upon service and return thereof with the prisoner, and cause of his imprisonment as aforesaid, before the chancellor or judge allowing the same, and in case of his absence before any other of them, the chancellor or judge within two days after the party shall be so brought before him, shall discharge such prisoner on taking his recognizance, with one or more sureties, in any sum in his discretion, having regard to the quality of the prisoner and the nature of the offence, for his appearance at the next court where the offence is properly cognizable, as the case shall require; and shall then certify the said writ with the return thereof, and such recognizance into the court where such prisoner shall be bound to appear, or if taken in the city of New-York, into the police office of the said city; unless it shall appear unto the said chancellor or judge, that such prisoner is detained upon a legal process out of some court having jurisdiction of criminal matters, or by some warrant under the hand and seal of a judge or justice for some matter or offence, for which by law the prisoner is not bailable: *Provided nevertheless,* That if any such prisoner shall have wilfully neglected for two whole terms after his imprisonment, to pray a *habeas corpus* for his discharge, in such case he shall not have any *habeas corpus* to be granted in vacation time in pursuance of this act.

When and by whom such writs to be granted.

Judge to discharge on recognizance.

Unless the prisoner be not bailable.

Provido, when a prisoner loses his right to the writ.

IV. *And be it further enacted,* That any prisoner as aforesaid, may move for and obtain his *habeas corpus*, as well out of the court of chancery as out of the supreme court, and if the chancellor or any judge of the su-

Penalty on chancellor or judge denying such writ

preme court in the vacation time, upon view of the copy of the warrant of commitment or detainer, or upon oath that such copy was denied as aforesaid, shall deny to allow any writ of *habeas corpus* by this act required to be granted, being applied for as aforesaid, he shall forfeit to the party grieved one thousand two hundred and fifty dollars.

Penalty for re-imprisoning for the same cause, a person once discharged by such writ.

V. *And be it further enacted*, That no person who shall be set at large upon any *habeas corpus*, shall be again imprisoned for the same offence, unless by the legal order or process of the court wherein he is bound by recognizance to appear, or other court having jurisdiction of the cause; and if any person shall knowingly, contrary to this act recommit or imprison, or cause to be recommitted or imprisoned for the same offence or pretended offence, any person so set at large, or shall knowingly aid or assist therein, he shall forfeit to the party grieved one thousand two hundred and fifty dollars, any colourable pretence or variation in the warrant of commitment notwithstanding.

Prisoners when entitled to bail on not being indicted

VI. *And be it further enacted*, That if any person shall be committed for any treason or felony, plainly and specially expressed in the warrant of commitment, upon his petition in open court, the first week of the term, or first day of the sessions of the court of oyer and terminer or gaol delivery, * after such commitment, the supreme court, or court of oyer and terminer or gaol delivery, shall upon motion in open court, the last day of such court, either by the prisoner or any one on his behalf, set at liberty the prisoner upon bail, unless it appear upon oath that the witnesses against the prisoner could not be produced the same court. And if any person committed as aforesaid, upon petition as aforesaid to be brought to trial, shall not be indicted and tried the second term, sessions of oyer and terminer or gaol delivery, after his commitment, or upon his trial shall be acquitted, he shall be discharged, so far as relates to any treason or felony for which he was committed as aforesaid.

When entitled to discharge on not being tried.

Legal process,

VII. *And be it further enacted*, That if any citizen of this state shall be committed to any prison, or in custody of any officer for any criminal matter, such prisoner shall not be removed therefrom, into the custody of any other officer, unless it be by legal process, or where the prisoner is delivered to some inferior officer to carry to gaol, or is sent by order of any court, judge or justice to any house of correction, or removal from one place to another within the same county for trial or discharge in due course of law, or in case of fire, infection or other necessity; and if any

Unless in cases of necessity

* "to be tried, shall not be indicted at the term or court": These words ought here to follow, and must have been omitted in the bill by mistake, as they are evidently proper to preserve distinctly the meaning of the original law, (10th sess. chap. 39, sect. 5,) from which this section was taken, and which it was intended to pursue.

Editors.

person shall after such commitment, make out or sign or countersign any warrant for such removal, contrary to this act, as well he who makes or signs or countersigns such warrant, as the officer executing the same, shall for every offence forfeit to the party grieved five hundred dollars.

Under a penalty.

VIII. *And be it further enacted,* That after the court of oyer and terminer or gaol delivery be proclaimed for that county where any prisoner is detained, no prisoner shall be removed from the common gaol upon any *habeas corpus* granted in pursuance of this act; but upon every such *habeas corpus* shall be brought before such court of oyer and terminer or gaol delivery, which court shall thereupon do what to justice shall appertain; *Provided* that after the court of oyer and terminer or gaol delivery be ended, any prisoner may have a *habeas corpus* according to the intention of this act.

No person to be removed by *habeas corpus* after the court of oyer and terminer, proclaimed,

Nor until the same be ended

IX. *And be it further enacted,* That where any person shall appear to be committed by any judge or justice, and charged as accessory before the fact to any felony, or upon suspicion thereof, or with suspicion of any felony, which felony shall be plainly and specially charged in the warrant of commitment, such person shall not be removed, or bailed by virtue of this act, or in any other manner than if this act had not been passed.

Accessaries before the fact, and prisoners on suspicion of felony, not bailable by this act.

X. *And be it further enacted,* That no citizen of this state, being an inhabitant or resident within it, shall be sent prisoner to any place whatsoever out of this state for any crime or offence committed within this state, and every such imprisonment is hereby declared to be illegal; and if any such citizen shall be so imprisoned, he may for every such imprisonment, maintain an action of false imprisonment in any court having cognizance thereof, against the person or persons by whom he shall be so imprisoned or transported, contrary to the intention of this act, and against every person who shall contrive, write, seal, sign or countersign any writing for such imprisonment or transportation, or shall be aiding or assisting in the same, or any of them; and shall recover treble costs besides damages, which damages so to be given shall not be less than one thousand two hundred and fifty dollars; and every person knowingly concerned in any manner as aforesaid in such illegal imprisonment or transportation, contrary to this act, and being thereof lawfully convicted, shall be disabled thenceforth to bear any office of trust or profit within this state; *Provided always,* That nothing in this act shall extend to give benefit to any person who shall by contract in writing, agree with any person to be transported to any place out of this state, and receive earnest upon such agreement, although that afterwards such person shall renounce such contract, nor to any person who shall be transported in pursuance of any law of this state.

No citizen to be sent a prisoner out of this state for any offence committed within it.

The person sent to have remedy by action,

And shall recover treble costs & damages not less than 1,250 dolls.

The party offending, disabled from office.

Persons agreeing to be transported, or transported by law, not within this act.

Penalties under this act, how recoverable.

Time limited for bringing suits under this act.

Defendant may plead the general issue.

Recorder of New-York a commissioner to execute this act.

XI. *And be it further enacted*, That the penalties by this act made recoverable, shall be recovered by the party grieved, his or her executors or administrators, against the offender, his executors or administrators by action of debt, or by information in any court of record; and if the offence be more than once committed by the same person, and more than one penalty be by this act made recoverable, any recovery or judgment at the suit of the party grieved, shall be a sufficient conviction for the first offence, and any after recovery or judgment, at the suit of a party grieved for any offence, after the first judgment, shall be a sufficient conviction to bring such person within the said penalty for the second offence; *Provided nevertheless*, That no person shall be sued or molested for any offence against this act unless within two years after the time when such offence shall be committed, in case the party grieved shall not then be in prison; and if in prison, then within the space of two years after the decease of the person imprisoned, or his delivery out of prison, which shall first happen; and in every such action or information it shall be lawful for the defendant to plead the general issue and give the special matter in evidence.

XII. *And be it further enacted*, That the recorder of the city of New-York, shall be *ex officio* a commissioner, equally authorised and required with a judge of the supreme court, to do and execute the powers and trusts which such judge is authorised and required to do and execute by virtue of this act.

C H A P. LXVI.

An ACT for the Relief of Debtors with respect to the Imprisonment of their Persons.

Passed 24th March, 1801.

Debtors for sums not above 25 dollars, to be confined only thirty days.

Sheriffs and gaolers if sued for discharging them, & judgment be for them, to have treble costs.

I. **B**E it enacted by the People of the State of New-York, represented in Senate and Assembly, That every person not being a freeholder, who shall be confined in gaol upon any execution or other process, or by virtue of any judgment or order of any court of justice, or by warrant from any judge or justice, for any debt, sum of money, fine or forfeiture not exceeding twenty-five dollars exclusive of costs, and shall have remained in gaol for thirty days, if not detained for any other cause, shall be discharged from such imprisonment by the keeper of the gaol, on application to him by the person so confined; and if any suit be brought against the sheriff or keeper of the gaol for such discharge, and the plaintiff be non-suited or discontinued, or judgment be given for the defendant, the defendant shall have treble costs.

II. *And be it further enacted*, That no person discharged from imprisonment by virtue of this act, shall at any time thereafter be imprisoned for the same cause, and if any person so discharged shall be arrested for the same cause, it shall be lawful for any judge of the court out of which the process upon which such person shall be arrested shall have issued, or any justice of the peace who shall have issued such process, to discharge such person out of custody ; *Provided*, such person do enter an appearance, or give a warrant to some attorney to appear and plead to such action.

Persons discharged not to be arrested again for the same cause.

Provide.

III. *And be it further enacted*, That notwithstanding such discharge, every debt and demand, judgment and decree against the person so discharged, shall remain good against the estate real and personal of such person, his arms and accoutrements excepted, and any creditor at whose suit such person was confined, his executors and administrators, and the officer who ought to prosecute for any such fine or forfeiture, may at any time after such discharge, sue out a new execution or other process for the said debt, sum, fine or forfeiture with the costs, against the estate real and personal of the person so discharged, his arms and accoutrements excepted, in the same manner and form as if such person had never been so confined for the same. And in case no judgment shall be obtained at the time of such discharge, it shall be lawful for the creditor to prosecute his action to judgment, and to prosecute any other action for the recovery of such debt or sum, and to take out such execution therefor with costs, against the estate real and personal of the person so discharged, as if such person never had been confined for the same.

Debts and demands to remain good against the estate of such debtor,

And creditor may have new execution against the same.

IV. *And be it further enacted*, That if any person shall be charged in execution for any sum or sums of money not exceeding in the whole five hundred dollars, or on which execution or executions there shall at any time remain due, as shall be made to appear by oath, a sum or sums of money not exceeding five hundred dollars ; or if any person shall be charged in execution for any sum or sums of money above five hundred dollars, and not exceeding as aforesaid two thousand five hundred dollars, and shall have remained in gaol the space of three calendar months, and shall in either case be minded to deliver up to the creditor or creditors who shall so charge him in execution, all his estate and effects towards satisfaction of the debt or debts wherewith he stands charged, it shall be lawful for such person in the first case at any time, and in the second case, after the expiration of the said three calendar months, to present a petition to the court from whence the process issued by which he shall be so charged, stating to the best of his knowledge and belief, the cause

Debtors in execution for any sum not exceeding 500 dollars may at any time

And for any sum not exceeding 2,500 dollars may after three months, petition to be discharged :

Matter of such petition.

of his imprisonment, and a just and true account of all his estate real and personal, in law or equity, and of all charges affecting the same, both as the same estate existed at the time of his first imprisonment in the said action, and as it shall exist at the time of exhibiting the petition; and also a just and true account of all deeds, securities, books and writings whatsoever relating to the same, and the names and places of abode of all the witnesses to such deeds, securities and writings. And that previous to the exhibition of such petition, the prisoner shall cause notice in writing to be given to the creditors by whom he shall be so charged, or to their executors or administrators, or to their attorney, fourteen days at least before such petition is presented; which notice shall be signed by the prisoner, and shall state his intention of petitioning the court as aforesaid, and set forth a true copy of the account of his estate as aforesaid; and that upon proof of the due service of such notice, the court shall order the prisoner to be brought up upon a day to be assigned; on which day the court shall in a summary way proceed to hear and examine the allegations and proofs of the parties, and if they shall deem it proper, the court shall tender to the prisoner an oath to the following effect, viz.

Notice to the creditors fourteen days before the petition be presented.

Court to order the prisoner to be brought up, and to examine the matter of such petition.

Oath to be taken by the prisoner.

"I do swear, that the account by me set forth in my petition presented to this honorable court, is in all respects just and true, and that I have not at any time, or in any manner or way whatsoever disposed of, or made over any part of my estate real or personal, in law or equity, with a view to the future benefit of myself or my family, or with a view to injure or defraud any of my creditors."

Court may thereupon order an assignment of his estate for the benefit of the creditors who charged him in execution.

And if the court shall be satisfied that the proceedings on the part of the prisoner are just and fair, they shall then immediately order the estate contained in such account, or so much of it as may be sufficient to satisfy the debts wherewith the prisoner stands charged as aforesaid, together with the gaol fees, his arms and accoutrements and necessary wearing apparel and bedding, and the tools or instruments of his trade, not exceeding fifty dollars in value in the whole, excepted, to be by the prisoner by a short indorsement on such petition, assigned to such person or persons as the court shall direct, and to his or their heirs, executors, administrators and assigns, for the benefit of the creditors who shall have so charged the prisoner in execution. And such assignment shall absolutely and completely vest in the assignee, all the estate, right and interest of the prisoner, and such assignee may sue for the recovery thereof in his own name; and that upon the assignment being made, the prisoner by order of the court shall be discharged from custody in the cause or causes stated in the said petition, and the

Assignee vested with the estate, and may sue.

Prisoner to be discharged.

sheriff or gaoler on being served with a copy of such order, shall discharge the prisoner from gaol without taking any fee, or detaining him for or on account of any gaol fees; that the assignee shall with convenient speed dispose of the estate so assigned, and divide the net produce among the creditors, if more than one, who shall have charged the prisoner in execution previous to the exhibition of his petition aforesaid, first paying the fees due to the sheriff or gaoler in whose custody he was, and retaining the overplus, if any there be, after the payments aforesaid, and all reasonable charges expended in or by means of getting in such estate, to the prisoner. But in case the creditor shall not be satisfied with the truth of the prisoner's oath, and shall in person or by attorney, (if it be made to appear to the satisfaction of the court that he cannot personally attend) desire further time to inform himself, the court shall appoint a further day for the hearing of the parties, and which day shall be as soon as conveniently may be, and not beyond the first week in the following term, and the prisoner in the mean time shall be remanded; that at such further day to be appointed no objection of the creditor as to matters of form shall be received, and unless the creditor shall then be able to satisfy the court that the proceedings on the part of the prisoner are not just and fair; the court shall order an assignment and discharge as aforesaid; *Provided however*, That if any person shall refuse to take the oath, or to execute the assignment aforesaid, he shall be presently remanded and continue in execution.

Assignee to sell the estate and divide the proceeds.

Before assignment further delay to be given to the creditors if required.

When the prisoner shall be remanded.

V. *And be it further enacted*, That any prisoner now confined, or hereafter to be confined in any gaol in any county, other than that in which the supreme court shall sit, by virtue of any execution or executions issuing out of the said supreme court, whereon there shall at any time appear by oath to be due a sum or sums not exceeding in the whole two thousand five hundred dollars, it shall be lawful for such prisoner to petition the court of common pleas which shall be held in the county, in the gaol of which such person shall be charged in execution as aforesaid, in like manner and form, and the same proceedings shall be had thereon, as if such prisoner had been confined by process of execution issuing out of the said court of common pleas; and every rule or order made by such court of common pleas for discharging such prisoner out of custody, shall be as valid as if the same had been made by the supreme court, and the sheriff or gaoler in whose custody such prisoner may be, is hereby required, on being served with a copy of such rule or order certified by the clerk of the court making the same, forthwith to discharge such person in the manner herein before directed, for the doing of which such sheriff or gaoler shall not be liable to any action of escape or other suit or information.

Prisoners in execution on process from supreme court for any sum not exceeding 2,500 dollars, and in gaol in any county where the supreme court does not sit, may petition the court of common pleas of such county:

Proceedings thereon.

Persons guilty
of perjury under
this act,
how punished

VI. *And be it further enacted,* That if any person who shall take any oath by this act required to be taken, shall upon any indictment for perjury be convicted by his own confession or by verdict, every person so convicted shall suffer the pains and forfeitures which by law are to be inflicted upon any person guilty of wilful and corrupt perjury; and shall likewise, if discharged out of execution by virtue of this act, be liable to be taken on any process *de novo*, and charged in execution for the said debt, in the same manner as if he had not been taken and discharged, and shall never after have the benefit of this act.

Persons discharged
not to be arrested
for the same
cause, unless
convicted of
perjury.

VII. *And be it further enacted,* That no prisoner, who shall be so discharged by virtue of this act on such petition as aforesaid, shall ever after be arrested for the same debt or debts, nor shall any action of debt be brought against him on any such judgment, unless he shall under this act be convicted of wilful perjury; but notwithstanding any discharge obtained by virtue of this act, for the person of any such prisoner, the judgment obtained against every such prisoner shall remain in force, and execution may at any time be taken out thereon against the lands, tenements, goods and chattels of any such prisoner, other than and except the necessary wearing apparel and bedding for him and his family, and the necessary tools for the use of his trade or occupation, not exceeding fifty dollars in value in the whole, as if he had never before been charged in execution and released out of prison by virtue of this act.

Their property
still liable.

Assignees may
compound
with debtors,
and submit
disputes to ar-
bitration.

VIII. *And be it further enacted,* That every assignee to whom by virtue of this act the estate or effects of any prisoner shall be assigned, is hereby empowered to make composition with any debtor or accountant to such prisoner, where the same shall appear necessary or reasonable, and to take such part of any debt or demand as can upon such composition be obtained, in full discharge of such debt or demand, and also to submit any dispute concerning any part of such prisoner's estate or effects, or by reason of any matter relating thereto or to such prisoner, or in respect of any debt or sum of money, or any thing claimed to be due or belonging to such prisoner at the time of his discharge, to the final end and determination of arbitrators, to be chosen by the said assignee and the party with whom any such dispute shall be; and if such arbitrators cannot agree in the same, then to submit the same to the determination of any umpire to be chosen by them, or otherwise to settle and agree the matter in dispute between them, in such manner as such assignee shall think fit and can agree, and the same shall be binding upon all the creditors of such prisoner who shall have charged him in execution, and also upon every such prisoner; and every such assignee is hereby indemnified

for what he shall fairly, and without any fraudulent design, do in the premises according to the directions of this act.

IX. *And be it further enacted,* That it shall be lawful for the respective courts out of which the process issued, upon which any such prisoner so discharged was committed in execution, or any judge of any such court, and for the supreme court, or any judge thereof in all cases and at any time, on the petition of any creditor or creditors who had charged any such prisoner in execution, or of any such prisoner, to such court, or to any judge thereof complaining of any insufficiency, fraud, mismanagement or other misbehaviour of any such assignee or assignees, to order the respective parties concerned to attend such court on the matter of every such petition, at some certain time in such order to be mentioned, and every such court on hearing the parties concerned therein, is hereby authorized to make such order and give such directions in the premises, either for the removal of such assignee or assignees and appointing any new or other assignee or assignees in the place of such assignee or assignees so to be removed, or for the just or equitable management or distribution of the said estate and effects, or any part thereof, for the benefit of the respective creditors as aforesaid of such prisoner, as such court shall think fit; and in case of the removal of any assignee or assignees, and the appointing of any new assignee or assignees, the estate and effects of such prisoner shall from thenceforth be divested out of the assignee or assignees so removed, and be vested in and delivered over to such new assignee or assignees, in the same manner and for the like intents and purposes, as the same were before vested in the former assignee or assignees.

Court on complaint against the assignees, may order the parties to appear :

And may remove the assignees & appoint others.

X. *And be it further enacted,* That where mutual credit shall have been given between any prisoner who shall be discharged under this act, and any other person, bodies politic or corporate, before the delivery of any schedule, or inventory of the estate and effects of such prisoner upon oath as by this act is directed, then and in every such case, the respective assignee or assignees of such prisoner shall have power, and they are hereby required on his and their parts, to state an account between them, and nothing more shall be deemed to be vested by any assignment or conveyance which shall be made by virtue of this act, as the estate or effects of such prisoner, than what shall appear to have been due, and to be justly coming to him on the balance of such account when truly stated.

Assignees to admit set-off.

XI. *And be it further enacted,* That if any defendant be taken or charged in custody at the suit of any person, upon any process out of any court of record, and impri-

Time for declaring against prisoners :

Service of the
declaration.

soned or detained in prison for want of sureties for his appearance to the same, the plaintiff in such process shall before the end of the next term after such process shall be returnable, declare against such prisoner in the court out of which the process issued, and shall cause a true copy thereof to be delivered to such prisoner, or to the sheriff or keeper of the gaol in whose custody such prisoner shall be, in which declaration it shall be alleged in custody of what sheriff or officer such prisoner shall be, by virtue of the said process at the time of such declaration, and to which declaration the said prisoner shall appear and plead, and if any such prisoner shall not appear and plead to the same, the plaintiff shall have judgment in such manner as if the said prisoner had appeared in such court and refused to plead.

Time for
charging pri-
soners in ex-
ecution.

XII. *And be it further enacted*, That if any plaintiff shall obtain judgment in any court of record in any action against any defendant in custody of any sheriff or other officer, either upon the process in the same action, or upon being surrendered in discharge of the bail, or otherwise, and shall not charge such defendant so remaining a prisoner in execution, within three months next after such judgment obtained, then such defendant so remaining in prison may be discharged out of custody by a *supersedeas* to be allowed by one of the judges of the court in which such judgment shall be obtained; and where any defendant shall be surrendered in discharge of his bail after judgment obtained against such defendant, and be thereupon committed to gaol and the plaintiff shall not charge such defendant so surrendered and remaining in gaol, in execution within three months next after such surrender, such defendant remaining in prison may be discharged out of custody by a *supersedeas* to be allowed as aforesaid.

Creditors
may require
prisoners re-
maining in
execution af-
ter three
months for
any sum not
above 2,500
dolls. to ex-
hibit an account
and make an
assignment,
or be barred
from a dis-
charge.

XIII. *And be it further enacted*, That where any prisoner charged in execution for any debt or damages not exceeding two thousand five hundred dollars besides costs, shall have remained in execution for the space of three months, then any creditor at whose suit such person shall be so charged, and his executors and administrators, may by notice in writing subscribed by such creditor, require such prisoner to exhibit such account and make such assignment as is herein before directed; and if such prisoner shall not as soon as may be after thirty days from the time of such notice, take the steps herein before directed in order to entitle him to a discharge by virtue of this act, such prisoner shall be forever barred from obtaining such discharge.

C H A P. LXIX.

*An ACT concerning the Commissioners of the Land-Office,
and the Settlement of Lands.*

Passed 24th March, 1801.

I. **B**E it enacted by the People of the State of New-York, represented in Senate and Assembly, That the person administering the government of this state, the lieutenant-governor, the speaker of the assembly, the secretary of the state, the attorney general, the comptroller and the treasurer of this state shall *ex officio* be and continue commissioners of the land-office, to direct the granting of the unappropriated lands within this state, according to such powers and directions as shall from time to time be prescribed by law; and all powers now, or at any time hereafter to be vested in the said commissioners, may be lawfully executed by any three of them, the person administering the government of this state being always one, and the secretary of this state shall be secretary of the said commissioners.

Certain persons made commissioners of the land-office.

What number, with the governor, make a quorum.

II. *And be it further enacted*, That it shall be lawful for the said commissioners, and they are hereby required, to direct the sale of the residue of the unappropriated lands of this state, situate in the western district thereof, to be made in the manner hereinafter prescribed, excepting the lands reserved to the Oneida, Onondaga and Cayuga Indians, and the lands purchased from the said Indians respectively, since the eleventh day of March, one thousand seven hundred and ninety-three, and all lands heretofore reserved by law for public uses, or for the use of this state, and all lands in the counties of Onondaga and Cayuga.

The commissioners may sell unappropriated lands in the western district:

Certain lands excepted.

III. *And be it further enacted*, That it shall be lawful for the said commissioners and they are hereby required, to direct the surveyor general to cause actual survey to be made of the unappropriated lands of this state situate in the said western district and not already surveyed; and that every of the tracts so to be surveyed as aforesaid, shall be laid out into a town or towns containing as nearly as may be sixty-four thousand acres each, and as nearly in squares as local circumstances will permit; and that each town shall be laid out and surveyed into lots of one hundred and sixty acres, which shall also be as nearly square as may be, and the lots in each town shall be numbered from number one progressively to the last inclusive.

Unappropriated lands in the western district to be surveyed, and laid out into towns & lots.

IV. *And be it further enacted*, That the surveyor general shall make, or cause to be made, a map of each of the said tracts so to be surveyed as aforesaid, distinguishing on such map each town, and the lots therein contained, which map shall be fixed up in the said surveyor general's office, and one copy thereof to be furnished by him shall also be fixed up in the office of the secretary of this state; and the

Surveyor general to make a map of each tract.

Map how disposed of.

said surveyor general and secretary shall respectively permit any person whatever freely to inspect the said maps between the hours of nine and twelve in the morning and three and six in the afternoon of every day, Sundays excepted; and the said map shall, after the sale of the lands described thereon as herein after directed, be filed in the offices of the said surveyor general and secretary respectively.

Planner of
giving notice
when any
tract is or-
dered to be
sold.

V. *And be it further enacted*, That whenever the said commissioners shall direct the sale of any tract or tracts of the said lands, surveyed as aforesaid, to be made pursuant to this act, and the map or maps thereof shall have been fixed up in the said offices as aforesaid, the said surveyor general shall give notice thereof by advertisement, to be published in at least one of the newspapers printed in each of the great districts in this state; and shall in such advertisement, specify a day certain, not less than two, nor more than four months from the day on which such advertisement shall be first published, when he will commence the sale of such lands in the city of Albany, by single lots, at public vendue, to the highest bidder; and shall also in such advertisement, generally describe the situation of such lands, and the terms of payment allowed to the purchaser by this act.

Proceedings
at the sale.

Restrictions
on sale.

VI. *And be it further enacted*, That the said surveyor general shall on the day specified in such advertisement, and on so many days succeeding the same as shall be necessary for that purpose, put up to sale at public vendue, at the city of Albany aforesaid, the said lands so advertised as aforesaid, and sell the same by single lots to the highest bidder; *Provided always*, That no more than sixty-four thousand acres of the unappropriated lands so to be surveyed as aforesaid, shall be directed by the said commissioners to be sold at any one sale or vendue, and that the same shall not be sold at a less price than seventy-five cents per acre; *And provided also*, That the sales to be directed by virtue of this act, shall be held at the distance of at least three months from each other.

Payments to
be made by
purchaser.

VII. *And be it further enacted*, That every purchaser shall immediately after having made his purchase, or within forty-eight hours thereafter, pay to the said surveyor general the fourth part of the purchase money, and on having paid the same, the said surveyor general shall give unto such purchaser a certificate, containing such a description of the lands purchased, as that the same may be inserted in the letters patent to be granted therefor; and shall indorse on such certificate, the sum by him received, and also the sum remaining due on such purchase; and if the purchaser shall not within twelve months after the date of the said certificate, pay the sum so remaining due to the treasurer of this state, the purchase of such delinquent purchaser shall be and hereby is declared void, and the money so paid forfeited to the people of this state; but

if the sum so remaining due shall be paid to the said treasurer within the time herein limited, he shall indorse a receipt therefor on the said certificate ; and it shall be lawful for the said commissioners and they are hereby required, on such certificate and receipt being produced to them, to direct letters patent to be prepared and issued for the lands described in such certificate, to the purchaser thereof, or to his legal representatives ; *Provided always*, That if any purchaser shall neglect or refuse, within forty-eight hours after such purchase, to pay the said fourth part of the purchase money, such purchase shall be and hereby is declared void ; and the said surveyor general shall, at the same vendue, again expose to sale the lands so purchased in manner aforesaid, and the purchaser shall for such neglect or refusal, forfeit to the people of this state the sum of twelve dollars and fifty cents, to be sued for and recovered by the said surveyor general in his own name, with costs of suit, before any justice of the peace within this state.

When letters patent to issue.

Penalty on purchaser for default of payment, of one fourth part of the purchase money.

VIII. *And be it further enacted*, That the said commissioners shall designate every town to be laid out by virtue of this act, by such name as they shall deem proper, and such name shall be inserted in the letters patent to be granted for the lands contained therein.

Commissioners to designate the name of each town.

IX. *And be it further enacted*, That in every town to be laid out as aforesaid, the surveyor general shall reserve four lots, and mark the same on the map, for promoting schools and literature ; which lots shall be as nearly central in each town as may be, and shall not be sold, but reserved for and hereafter applied by the legislature for promoting public schools and literature in the respective towns.

Lots reserved for schools.

X. *And be it further enacted*, That the surveyor general shall within forty days after every vendue or sale of lands to be held by virtue of this act, make return of such sales and pay the monies which shall have arisen therefrom, to the treasurer of this state ; and if the respective purchasers, or some person on their behalf, do not pay the purchase money which shall remain due, within the time herein before limited, the said treasurer shall transmit to the said surveyor general the name of every delinquent purchaser, and the said surveyor general shall thereupon advertise and sell the said lands so sold and not paid for, in the same manner as if such sale had not been made. *And further*, That in case any person shall purchase at any sale or vendue to be held by virtue of this act two or more lots as aforesaid, the same shall be included in one patent to be issued for the same.

Surveyor general to make return of sales.

And sell again the lands of purchasers who do not pay.

Lots of one purchaser to be included in one patent

XI. *And be it further enacted*, That it shall be lawful for the said commissioners to grant so much of the lands under the water of navigable rivers, as they shall deem neces-

Commissioners may grant lands under the waters of

navigable
rivers :

But only to
the owner of
the adjacent
lands.

Notice of
every such
application.

Condition of
settlement an-
nexed to
every grant.

Time hereto-
fore limited,
extended.

Form of the
patents, and
reservation
therein.

Commission-
ers to extin-
guish claims
against lands
granted or lo-
cated under
authority of
this state, by
granting
other lands to
claimants.

Certain other
officers autho-
rized to ex-
tinguish
claims by the
payment of
money.

fary, to promote the commerce of this state ; *Provided always*, That no such grant shall be made to any person whatever other than the proprietor or proprietors of the adjacent lands ; *And provided also*, That every applicant for such grant shall previous to his or her application, give notice thereof by advertisement to be published in one of the newspapers printed in this state, for six weeks successively, and shall cause a copy of such advertisement to be put up at the court house of the county in which the lands lay so intended to be applied for, and if there be no court house in the county, then at such place as the said commissioners shall direct.

XII. *And be it further enacted*, That on the lands to be granted by this act, there shall be an actual settlement made for every six hundred and forty acres, which may be granted to any person or persons, within seven years from the first day of January next after the date of the patent by which such lands shall be granted, and on the failure of such settlement, the unsettled lands shall revert to the people of this state ; that the time limited in the patents heretofore granted by this state for the settlement of lands, shall be and hereby is extended for seven years from the first day of January last.

XIII. *And be it further enacted*, That all letters patent hereafter to be granted, shall be in such form as the said commissioners shall direct, and shall contain an exception and reservation to the people of this state of all gold and silver mines.

XIV. *And be it further enacted*, That it shall be lawful for the said commissioners, in all cases in which claims exist against this state for lands granted or located under the authority thereof to any persons whatsoever, the title to which was at the time of granting or locating the same out of this state, to agree with the said claimants upon such terms as they shall deem reasonable for the extinguishment of their respective claims, and to cause to be ascertained and determined in such manner as the said commissioners shall deem proper, the quantity of other lands to be granted by them to such claimants in lieu of the lands first granted or located by them as aforesaid.

XV. *And be it further enacted*, That it shall be lawful for the comptroller, the attorney general and surveyor general of this state, or any two of them, by and with the consent and approbation of the person administering the government, from time to time, to extinguish all legal claims upon lands that have been sold under the authority of this state, and that it shall be lawful for the comptroller to draw his warrants on the treasurer, for the sum or sums that shall or may be agreed to be paid for the extinguishment of such claims, to be paid out of any unappropriated monies in the treasury.

XVI. *And be it further enacted*, That the secretary of this state shall as soon as conveniently may be, after the first day of January one thousand eight hundred and eight, make out an abstract of all lands granted by letters patent, under the great seal of this state, which contain a condition of actual settlement, specifying the time limited in and by such letters patent for such actual settlement, and shall deliver such abstract to the surveyor general for the time being, who is hereby enjoined without delay after the day above mentioned, to make inquiry, and if he shall find that any of such lands granted on the condition aforesaid, shall not then be so actually settled, he shall give notice thereof to the attorney general of this state, who shall without delay cause a writ to be issued out of the court of chancery, and directed to the sheriff of the county in which the same land shall be situated in the form following :

The secretary after 1st January, 1808, to make an abstract of lands forfeited for breach of condition of settlement :

Surveyor general to make inquiry thereof,

And give notice to the attorney general ;

His duty.

" THE PEOPLE of the State of New-York ; To the Sheriff of
Greeting ;

Form of the writ of inquiry from chancery :

WHEREAS by our letters patent under our great seal, bearing date, (reciting the same letters patent) and because we are informed that such settlement (or, settlements, as the case may be) as the law requires, hath not (or, have not, as the case may be) been made thereon, by reason whereof the same lands ought to revert to us : Therefore, we command you, that by the oath of twelve good and lawful men of your county, you diligently inquire whether such settlement, (or, settlements, as the case may be) hath (or, have, as the case may be) been made on the said lands, or on any, and what part thereof as the law requires ; and the inquisition which you shall take thereof, do you send under your seal, and the seals of those by whose oath you take the same inquisition, before us in our court of chancery without delay, wheresoever the said court shall then be, together with this writ."

And the sheriff shall upon receiving such writ, affix a copy thereof upon the front door of the court house, or place where the courts of common pleas and sessions of the peace in his county were last held, with a notice of the time when and place where the same writ is to be executed, which time shall not be less than sixty days from the time of fixing the same notice in the manner aforesaid ; and upon the return of the same writ, any person aggrieved by the inquisition thereupon taken, may traverse the same, and when any issue shall be joined thereupon, the record thereof shall be sent into the supreme court of judicature of this state, there to be tried and determined according to law ; and if judgment shall be given thereupon for the people of this state, then a writ shall be issued out of the same supreme court to the sheriff of the same county, commanding him to seize and take the lands found to be so unsettled, into the hands of

Sheriff to give notice of executing the same.

Sheriff's inquisition may be traversed, and proceedings thereon.

Writ of seizure when to issue.

the people of this state; but if no such traverse shall be taken to such inquisition, within three terms after the return of the same, then such writ shall immediately thereafter be issued out of the court of chancery, commanding the sheriff to take and seize the lands found by the inquisition to be so unsettled, into the hands of the people of this state, and upon the return of such writ of seizure, the attorney general shall cause the record and process to be exemplified under the seal of the court, out of which the same writs of seizure issued, and deposit such exemplification in the office of the secretary of this state, and all such lands so found to be unsettled, shall be thereafter disposed of and appropriated in such manner and for such purposes as the legislature shall direct.

Eastern boundary line of the lands ceded to Massachusetts, made permanent.

XVII. *And be it further enacted*, That the map and description of the line run by Benjamin Elicot, as for the eastern boundary line of the lands ceded by this state to the commonwealth of Massachusetts, by the deed of mutual cession executed on the sixteenth day of December, one thousand seven hundred and eighty-six, with the certificate of the surveyor general of this state indorsed thereon, and heretofore delivered by him to the secretary of this state, to be deposited among the archives of this state, shall there remain as a public record; and the line indicated on such map, and in such description, shall forever hereafter be taken and deemed to be the eastern boundary line of the lands aforesaid.

Commissioners to sell land warrants

XVIII. *And be it further enacted*, That it shall be lawful for the commissioners of the land-office, from time to time, to sell in such manner and on such terms as they shall judge most advantageous to the state, all such land warrants of the United States of America for bounty lands to soldiers as have been or hereafter may be assigned to the people of this state.

C H A P. LXX.

An ACT declaring the Powers of the Courts of General Sessions of the Peace, and the Powers and Duties of Justices of the Peace.

Passed 24th March, 1801.

Powers of the courts of general sessions of the peace.

I. **B**E it enacted by the People of the State of New-York, represented in Senate and Assembly, That it shall be lawful for the courts of general sessions of the peace in the city and county of New-York, and in the several counties of this state, to inquire by the oath of good and lawful men of the same counties respectively, by whom the truth may be the better known, of any treason, misprision of treason, murder or felony, and of all other

crimes and misdemeanors whatsoever, done or committed in the city or county for which such court shall be held, and the same crimes and misdemeanors to hear, determine and punish according to law; *Provided nevertheless*, That it shall not be lawful for any of the said courts, to hear or determine any indictment of or for any treason, misprision of treason, murder or other felony or crime, which is or shall be punishable with death, or with imprisonment in the state prison for life, but shall cause the indictments for the same to be delivered to the next supreme court, or court of oyer and terminer or gaol delivery to be held in such city or county, there to be determined according to law.

II. *And be it further enacted*, That the sheriffs of the respective counties of this state, at certain days and places, which the justices of the peace for every such county, or any two or more of them, together with one of the judges of the court of common pleas in and for such county, shall make known to them, shall cause to come before the said courts of general sessions of the peace, twenty-four good and lawful men of the same counties respectively, to inquire for the people of this state, and the bodies of the same counties; and likewise so many good and lawful men of the same counties respectively, duly qualified to serve as jurors in the same counties, as the said justices shall direct, by whom the truth of the matter may be the better known and inquired into of all crimes and misdemeanors, to be tried at the said courts.

Sheriffs to return to such courts

Grand jurors

And petit jurors.

III. *And be it further enacted*, That no process or pleas whatever before any of the said courts of general sessions of the peace, shall be discontinued by any new commission of the peace, but the same shall stand in full force; and the justices in such new commissions, shall have authority in the said courts to continue, hear and determine the same process and pleas, and all that shall depend upon them, as the other justices might have done if no new commission had been made.

Process and pleas not discontinued by a new commission of the peace.

IV. *And be it further enacted*, That upon appeals to the said courts of general sessions of the peace against any judgment or order of any justice of the peace, the said courts shall cause all defects of form to be found in such judgment or order to be amended without any costs to the parties concerned; and after such amendment made, shall proceed to hear the merits of such judgment or order, upon due proof by witnesses or otherwise, and to determine upon the same as if no such defect of form had existed.

On appeals, the sessions to amend defects in form.

V. *And be it further enacted*, That in every county of this state, fit and discreet men shall from time to time be appointed and commissioned, justices to keep the peace

Justices of the peace to be appointed in each county:

Manner of
executing the
sentences and
defraying the
charges in
such cases.

X. *And be it further enacted*, That the judgments and orders of the said court shall be executed by the sheriff of the said city and county, by virtue of a warrant under the hand and seal of the mayor or recorder, who presided, commanding the same to be done; and that the charges of prosecuting and punishing every such offender, shall be raised at the same time and in like manner as the other contingent expences of the said city and county, so as the same do not exceed two dollars and fifty cents.

Special sessions instituted to try and punish persons guilty of like offences in the other counties

XI. *And be it further enacted*, That if any person commit any of the said offences, under the degree of grand larceny, in any of the counties of this state, the said city and county of New-York excepted, and be charged as aforesaid before any justice of the peace, and shall not give the like bail within forty-eight hours after being committed to gaol, or to the custody of a constable of the town where the offender was taken, it shall then be lawful for the justice who committed such offender, to certify the cause thereof to any other two justices of the peace of the said county, and require them to associate with him to try such offender, which they are hereby required to do. And the said justices being met, are authorised to hear, and a majority of them to determine the offence, in like manner as the said court of special sessions in the city and county of New-York, and thereupon to impose a fine not exceeding twenty-five dollars, or imprisonment in the common gaol of the county not exceeding six months, or both, as the case may require; and also to make such order or transportation, and to inflict the like punishment for a like non-compliance with the same, as the said court of special sessions in the said city and county of New-York, is above authorised to make and inflict; and that the charges of prosecuting, punishing and transporting every such offender, shall be defrayed by the counties respectively where the offence shall happen, and be raised in the same time and manner as the other contingent charges of the county, so as that all the charges for each offender shall not exceed five dollars; *Provided*, That nothing herein contained shall be construed to prevent the said court from trying any such offender in less than forty-eight hours, if such offender shall require the same.

Charges how
defrayed.

Provide.

Special sessions not to send to the state prison.

Fines how applied.

XII. *And be it further enacted*, That none of the said courts of special sessions for the trial of the said offenders, who do not give bail as aforesaid, shall have power to sentence any such offender to be imprisoned in the state prison; and any fine to be imposed on such offender, shall when paid, be applied towards payment of the charges of the prosecution, and the remainder, if any, paid into the treasury of the county.

C H A P. LXXII.

An ACT concerning the Surveyor General.

Passed 24th March, 1801.

1. **B**E it enacted by the People of the State of New-York represented in Senate and Assembly, That the person administering the government of this state, by and with the advice and consent of the council of appointment, shall as often as may be necessary, appoint a surveyor general for this state ; *Provided however*, That the person now holding the said office shall continue therein during the pleasure of the council of appointment. And that the surveyor general be, and he is hereby authorized and required, from time to time, to dispose of all real estates forfeited to the people of this state, and not otherwise directed to be sold, in manner following, viz. Every estate so to be sold shall be sold at public vendue in the city of Albany, of the time and place of which vendue notice shall previously be given by him for at least eight weeks successively in the newspaper published by the printer of the state for the time being, in one other newspaper printed in the city of New-York, and in the newspaper of one other printer, whose residence shall be nearest to the premises ; and on such sale the purchaser of any such estate shall within twenty-four hours thereafter pay the one fourth part of the money bid for the same, of which sale and payment the surveyor general shall give him a certificate, and if such purchaser shall within twelve months thereafter, pay the remainder of the consideration money into the treasury, the surveyor general shall execute a conveyance to him for the estate so purchased, and the form of the conveyance to be given by the surveyor general shall be as follows, viz.

Surveyor general to be appointed.

Proviso.

Directed to sell forfeited estates :

Manner of such sales.

“ TO ALL to whom these Presents shall come, I surveyor general of the state of New-York, Send Greeting :

Form of conveyance.

“ **KNOW YE**, That by virtue of the authority vested in me by the laws of the said state, and in consideration of the sum of *I have granted, bargained, sold, enfeoffed and confirmed, and by these presents do grant, bargain, sell, enfeoff and confirm unto all the estate, right, title and interest of the people of the said state, of, in and to (here describe the lands or tenements) ; To have and to hold the premises hereby granted, bargained, sold, enfeoffed and confirmed to the said heirs and assigns, to the proper use and behoof of the said heirs and assigns for ever. In testimony whereof, I have herunto set my hand and seal, the day of in the year of our Lord and in the year of the independence of the said state.*”

That all the estate, right and interest of the people of this state, of, in or to the lands or tenements in such conveyances mentioned shall thereby vest in the grantee, his

Such conveyance to operate as a warranty.

To give notice at the sale of the state of the tide.

heirs and assigns, and such conveyance shall be deemed to operate as a warranty from the people of this state, for securing to the grantee, his heirs and assigns, the lands and tenements so conveyed. That in all cases where the surveyor general, after having taken the advice of the attorney general, shall deem forfeited lands to be subject to or incumbered with claims or controversy, and in all cases where he shall deem the people of this state to have a less interest than the absolute property in the whole of the lands, it shall be his duty in such cases at the time and place of sale, and for at least three hours before the sale, to affix in some public and convenient place there, a writing containing a state of all the material facts and circumstances relating to such claim or controversy, or relating to such interest of the state, as far as the same shall have come to his knowledge, to the end that all persons who shall be then and there attending with intent to purchase, may be informed of such claim or controversy, and of the nature and extent of the interest of the state in the lands. But the conveyance in such cases shall not be deemed to operate as a warranty from the people of this state, and there shall accordingly be inserted in the conveyance immediately before the words "*In testimony*," the words following, viz. "*these presents however are in no wise to operate as a warranty.*"

In such cases, the conveyance not to operate as a warranty.

Surveyor general authorized to administer oaths.

II. *And be it further enacted*, That whenever it shall be necessary to authenticate by oath any business to be done by any person under the superintendence or direction of the surveyor general, such oath may be administered either by himself, or by any public officer authorized to administer oaths.

Map of the state how to be distributed.

III. *And be it further enacted*, That the surveyor general, as soon as he shall have completed a map of this state, in conformity to the documents directed to be furnished him, shall furnish each branch of the legislature with one map, and shall cause one map for each town in this state to be deposited in the office of the secretary of this state, to be given to the clerk of each town, or to his order for the use of said town.

Bounds of Niagara lands to be established.

IV. *And be it further enacted*, That the surveyor general shall cause the boundaries of the lands belonging to the people of this state adjoining the river Niagara to be established, by and with the approbation and consent and at the expence of the proprietors of the lands adjoining the same.

Lands in fourth allotment of the Royal grant to be surveyed and sold.

V. *And be it further enacted*, That it shall be lawful for the surveyor general, and he is hereby directed, as soon as may be, to cause the lands in the fourth allotment of the Royal grant, which were vested in the people of this state, except such part thereof as shall be conveyed to occupants upon a survey by him made in pursuance of the fourth

section of an act, entitled *An act for the relief of Nicholas Aldridge and others*, and have not been sold by the commissioners of forfeitures, to be surveyed into lots, to contain not more than three hundred acres, and shall sell the same at public vendue, in the same manner and upon the same terms and conditions as are prescribed to the commissioners of the land-office in respect to the unappropriated lands in the western district of this state.

VI. *And be it further enacted*, That the surveyor general shall be, and he is hereby empowered to demand from any supervisor of any town in this state, a survey of so much of the bounds of such town as he cannot otherwise obtain, and it is hereby made the duty of such supervisor thereupon to cause such survey to be made, and within sixty days after such demand, to deliver a map and description of such bounds to the surveyor general, the costs and charges of which shall be defrayed by the towns respectively to which such bounds belong, in the manner in which other contingent charges of towns are defrayed and paid.

Surveys of towns to be furnished the surveyor general.

VII. *And be it further enacted*, That in case of the refusal or neglect of any supervisor to perform the duties enjoined on him as aforesaid, he shall forfeit and pay the sum of fifty dollars, to be recovered by the district attorney of the district in which such supervisor shall reside, in an action of debt in any court of record in this state having cognizance thereof; and it is hereby made the duty of the said district attorney to prosecute any delinquent in the premises, and the monies so recovered shall be delivered to the surveyor general, and by him be applied to the making of a map of the town delinquent as aforesaid.

Penalty on supervisors for neglect in the premises:

How recovered and applied.

VIII. *And be it further enacted*, That it shall be lawful for the surveyor general to demand and receive the fees herein after mentioned for the services to which they are annexed, to wit: For filing every paper twelve and an half cents; for all original drafts twenty-five cents for each sheet containing one hundred and twenty-eight words; for entering every copy when requisite, and for copies of all papers on file twenty cents for each sheet containing one hundred and twenty-eight words; for every search twelve and an half cents; for copies of maps such sum as is usually charged for the like business; for surveys to be performed at the rate of three dollars and fifty cents for the surveyor per day, exclusive of the reasonable expenses for the hire of men, horses and provisions.

Fees of the surveyor general.

IX. *And be it further enacted*, That the surveyor general shall from time to time account with the comptroller for all monies received by him in behalf of the state.

Surveyor general to account for public monies.

X. *And be it further enacted*, That the secretary of this state shall from time to time, when thereunto required by

Secretary of state to furnish him with documents.

the surveyor general, furnish him with certified copies, or extracts of such patents, Indian purchases, surveys, and other papers as he shall signify to be requisite for the better execution of his trust.

C H A P. LXXIII.

An ACT concerning Escheats.

Passed 24th March, 1801.

Administra-
tor to account
for and pay
into the trea-
sury of the
state the sur-
plus of the
personal es-
tate, when no
person ap-
pears as next
of kin to
claim it.

Mode of com-
pelling the ad-
ministrator to
account and
pay.

I. **B**E it enacted by the People of the State of New-York, represented in Senate and Assembly, That in cases where administration hath been, or shall be granted to any person, not the widow of, or not of kin to the intestate, and no person shall within one year after granting the same appear to claim the personal estate of such intestate as next of kin, if the administrator shall neglect or refuse to pay the amount thereof, after deducting the debts and funeral charges of the intestate into the treasury of this state, for the benefit of those who may thereafter appear to be entitled to the same, it shall then be the duty of the attorney general to cause such administrator to be cited to exhibit a just and true inventory, and render an account of the administration of the goods, chattels and credits of such intestate, unless such administrator shall have before exhibited such inventory; and then, only to render an account of the administration as aforesaid; and the judge of the court of probates or surrogate, before whom such administrator shall be cited, shall thereupon examine and settle such account, and after deducting all debts and funeral charges of the intestate, shall order the administrator to pay the balance to the treasurer of this state for the purposes aforesaid, but no commission whatsoever shall in such case be allowed to such administrator on such account, and in case any such administrator shall neglect or refuse to exhibit such inventory, or to render such account, or to pay the amount of the estate of such intestate to the treasurer as aforesaid, it shall then be the duty of the attorney general to cause a suit to be brought for and on behalf of the people of this state against such administrator, in any court of record, for the sum so ascertained by the judge of the court of probates or surrogate, or in the court of chancery for an account of the estate of the intestate, and to compel payment of the same into the treasury as aforesaid, and also to cause suits to be brought upon the bond given by such administrator upon obtaining the letters of administration; and if such administrator shall be found in default, and a judgment or a decree be given or obtained against him in any such suit, he shall pay costs therein,

to be taxed to the attorney general ; and the monies recovered in every such suit, and upon such bonds, shall be paid into the treasury of this state for the purposes aforesaid ; and if any person at any time thereafter shall claim any part of the money so paid into the treasury, such person may present a petition to the chancellor, stating the claim and praying an order to the treasurer to pay the money, a copy of which petition shall be served upon the attorney general, who shall put in an answer to the same, and the chancellor shall thereupon examine the said claim and the allegations and proofs, and if he shall find that such person is entitled to any money so paid into the treasury, he shall by an order direct the comptroller to issue his warrant to the treasurer for the payment of the same, but without any interest or costs to the person so entitled to it, which order shall be sealed with the seal of the said court of chancery, and be signed by the chancellor and countersigned by the register of the said court, and shall be a sufficient voucher for such warrant of the comptroller.

Persons claiming the surplus, how to obtain it.

II. *And be it further enacted*, That whenever the attorney general shall be informed or have reason to suspect that any person has died seised of any real estate within this state, without making any devise thereof, and leaving no heir capable of inheriting the same, he shall cause a writ to be issued out of the court of chancery, and directed to the sheriff of the county in which the same real estate shall be situated, in the form following :

Real estate left undevise and no heir to claim it, to vest in the state :

" **THE PEOPLE, TO THE SHERIFF of** *greeting :*
Because we are informed that A. B. died seised of divers lands, tenements and hereditaments in your county, without making any devise thereof, and leaving no heir capable of inheriting the same, We command you, that, by the oath of twelve good and lawful men of your county, you diligently inquire what lands, tenements and hereditaments the said A. B. was seised of at the time of his death, of any and what estate of inheritance, and when he died, and whether he made any, and what devise thereof, and whether he left any heir, and if he did, who is his heir, and what is the clear yearly value of such lands, tenements and hereditaments ; and the inquisition which you shall take thereof, do you send under your seal, and the seals of those by whose oath you take the same inquisition, before us in our chancery without delay, wheresoever the said court shall then be, together with this writ."

Writ of inquiry from chancery in such cases :

And upon the return of the inquisition thereupon taken, any person aggrieved thereby may traverse the same ; and when any issue shall be joined thereupon, the record thereof shall be sent into the supreme court, there to be tried and determined according to law ; and if the judgment shall be given thereupon for the people of this state,

Inquisition taken thereof, traversable.

Writ of seizure.

then a writ shall be issued out of the same supreme court, to the sheriff of the same county, commanding him to seize and take the lands, tenements and hereditaments whereof the person named in such inquisition shall be found to have died seised as aforesaid into his hands; but if no such traverse shall be taken to such inquisition before the end of the next term after the return of the same inquisition, then such writ shall immediately thereafter be issued out of the court of chancery, commanding the sheriff to seize and take the same lands, tenements and hereditaments, and upon the return of such writ of seizure, the attorney general shall cause the record and process to be exemplified under the seal of the court out of which the same writs of seizure issued, and deposit such exemplification in the office of the secretary of this state, and the commissioners of the land-office shall thereupon cause the said lands, tenements and hereditaments to be sold at public vendue by the surveyor general, who shall give at least six weeks previous notice of the time and place of such sale, by publishing the same in the newspaper printed by the printer to this state, and in one of the newspapers printed in the city of New-York; and the surveyor general shall upon such sale give the purchaser a certificate, containing the name of the purchaser, and a description and the bounds of the lands, tenements and hereditaments purchased, and the price to be paid for the same; and the purchaser shall thereupon, and within thirty days thereafter, pay to the treasurer of this state the sum mentioned in such certificate, and the treasurer shall thereupon indorse a receipt for the same upon such certificate; and upon producing the same certificate and receipt to the commissioners of the land-office, they shall cause letters patent to be issued to such purchaser for the lands, tenements and hereditaments in the same certificate mentioned; which letters patent shall be in such form as the said commissioners shall direct, and shall grant and convey an estate of inheritance in the said lands, tenements and hereditaments to such purchaser, and to his heirs and assigns for ever; and upon the production of such letters patent to the sheriff, he shall deliver the possession of the said lands, tenements and hereditaments to the purchaser thereof.

Commissioners of the land-office to cause lands to be sold;

And letters patent to issue to the purchaser.

Proceedings on forfeiture of lands or charters for treason:

III. *And be it further enacted*, That the like process and proceedings, as near as the circumstances of the cases will admit, shall be had in all cases of real estates to be forfeited for treason, or upon any outlawry for the same, and in all cases of forfeiture of personal estate for treason, the attorney general may sue for and recover the same, for and in behalf of the people of this state, and shall pay the amount thereof, when recovered, into the treasury; and in cases where it shall be necessary, the attorney

general may cause a writ to be issued out of the court of chancery, to the sheriff of any county, to inquire what goods and chattels any person convicted of treason, or outlawed for the same, had at the time of such conviction, and to seize and safely keep the same, and return the inquisition into the court of exchequer, where any person aggrieved thereby may traverse the same ; and if judgment shall be given upon such traverse for the people of this state, or if such inquisition shall not be traversed before the end of the term in which it shall be returned, then a writ shall be issued out of the court of exchequer to the sheriff, commanding him to sell the said goods and chattels, and to bring the monies arising from the sale thereof into the said court for the use of the people of this state.

Personal estate so forfeited to be sold.

C H A P. LXXIV.

An ACT to prevent Perjury.

Passed 24th March, 1801.

I. **B**E it enacted by the People of the State of New-York, Subornation of perjury. represented in Senate and Assembly, That if any person shall unlawfully and corruptly procure any witness by any means whatsoever to commit any wilful and corrupt perjury, in any matter or cause depending or to depend in the court of chancery, or in the court of probates, or in any court of record, or before any judge, justice of the peace, mayor, recorder or alderman, or shall unlawfully and corruptly procure any witness, who shall be sworn to testify *in perpetuam rei memoriam*, every such person shall for every such offence be adjudged guilty of subornation of perjury : And if any person, either by the subornation of another, or by his or her own act or Perjury. consent, shall wilfully and corruptly swear or affirm falsely in any of the courts aforesaid, or before any person having competent authority to administer such oath or affirmation, every such person shall be adjudged guilty of wilful and corrupt perjury ; and every person convicted of subornation of perjury, or of wilful and corrupt perjury, shall not thereafter be received as a witness to be sworn in any matter or cause whatsoever until the judgment given against him or her be reversed.

Punishment for these crimes.

II. *And be it further enacted*, That in every information or indictment to be prosecuted against any person for wilful and corrupt perjury, either at the common law or upon this act, it shall be sufficient to set forth the substance of the offence charged upon the defendant, and by what court or before whom the oath was taken, averring such court or person to have a competent authority to

Substance of the indictment or information for perjury.

administer the same, together with the proper averments to falsify the matter wherein the perjury is assigned, without setting forth any part of any record or proceedings, either in law or equity, other than as aforesaid, and without setting forth the commission or authority of the court or person before whom the perjury was committed.

And for sub-
ornation of
perjury.

And that in every indictment or information for subornation of perjury either at common law, or upon this act, it shall be sufficient to set forth the substance of the offence charged upon the defendant, without setting forth any part of any record or proceedings, either in law or equity, and without setting forth the commission or authority of the court or person before whom the perjury was committed, or was agreed or promised to be committed.

Judges of the
supreme
court, & cir-
cuit, & courts
of oyer & ter-
miner to di-
rect prosecu-
tions for per-
jury:

III. *And be it further enacted*, That it shall be lawful for any judge of the supreme court, either at the supreme court or any circuit court, and for the justices of the courts of oyer and terminer and gaol delivery, sitting the court, or within twenty-four hours thereafter, to direct any person, examined as a witness upon any trial at such court, to be prosecuted for perjury, if there shall appear to him or them reasonable cause for such prosecution, and that the same would be proper, and to assign the party injured or other person undertaking such prosecution counsel, who shall do their duty without any fee or reward for the same; and every such prosecution shall be carried on without payment of any fees to any officer of the court who might otherwise claim the same; and the clerk attending when such prosecution is directed, shall without any fee or reward, give the party injured or other person undertaking such prosecution, a certificate of the same being directed, and the name of the counsel assigned him by the court, which certificate shall be proof that such prosecution was directed, but no such direction or certificate shall be given in evidence on the trial to be had upon a prosecution so directed.

Proceedings
on such pro-
secution.

C H A P. LXXV.

An ACT concerning the Supreme Court.

Passed 24th March, 1801.

Terms of the
supreme court

I. **B**E it enacted by the People of the State of New-York, represented in Senate and Assembly, That the supreme court of judicature of this state shall be held at the four several terms following, to wit: On the third Tuesdays of January, April, July and October in every year, and that the said several terms of the said court shall continue and be held from the time of the commencement, every day, except Sunday, until and including Saturday in the next ensuing week, and that the term commencing on

the third Tuesday of January, shall be called *January term*, and shall be held in the city of Albany; and the term commencing on the third Tuesday of April, shall be called *April term*, and shall be held in the city of New-York; and the term commencing on the third Tuesday of July, shall be called *July term*, and shall be held in the said city of New-York; and the term commencing on the third Tuesday of October, shall be called *October term*, and shall be held in the said city of Albany.

II. *And be it further enacted*, That there shall be in each of the said terms two common days of return only, that is to say, the first day and the Tuesday in the next ensuing week of each term, but that the process in proceedings by bill or otherwise except on original writs, if issued in term, may be tested any day in that term, and be made returnable on any day in the same term, or the next term; and if issued in the vacation may be tested on any day in the preceding term, and be made returnable on any day in the next term.

Tests and return of process.

III. *And be it further enacted*, That all writs and process returnable in the said supreme court, shall be made returnable as follows, that is to say: "*Before our justices of our supreme court of judicature, at the city hall of the city of New-York,*" (or, *city of Albany*, as the case may be) and proceedings in the said court which have been supposed to be before the people of this state, shall be before the justices of the people of the state of New-York of the supreme court of judicature of the same people.

Process returnable before the judges:

Proceedings to be before the same.

IV. *And be it further enacted*, That it shall be lawful to use paper instead of parchment in all proceedings in the said court, except as to the process of the same.

Proceedings, except process, may be on paper.

V. *And be it further enacted*, That no issue in any civil cause shall hereafter be tried at the bar of the said supreme court, without the leave of the said court for that purpose first had and obtained.

No trial at bar without leave.

VI. *And be it further enacted*, That there shall be two clerks of the said court, who shall have like powers, be subject to the like duties and be entitled to like fees for services performed; and that one of the clerks of the said court shall keep his office in the city of New-York, and shall attend the said court and officiate as clerk thereof when the same court shall sit in the city of New-York; and the other of the said clerks shall keep his office in the public building in the city of Albany, and shall attend the said court and officiate as clerk thereof, when the same court shall sit in the city of Albany: And that it shall be lawful for the justices of the same court, from time to time, to direct such records and papers as they shall think proper to be removed from the clerk's office in the city of New-York, and deposited in the clerk's office in the city of Albany.

Clerks of the supreme court & their duties

Records and papers how removable to Albany.

VII. *And be it further enacted*, That there shall be two

Seals of the said court.

seals of the said court, and the descriptions of the same in writing, deposited and recorded in the office of the secretary of this state, shall remain as public records, and that each of the said clerks shall have the custody of one of the said seals, and all process and other proceedings issued under either of the said seals shall be equally valid. *And further,* That all costs and judgment rolls in the same court may be taxed and signed by either of the said clerks.

Clerks to tax costs and sign rolls.

Recorder of New-York made a commissioner to do certain duties of a judge of the supreme court.

VIII. *And be it further enacted,* That the recorder of the city of New-York, shall be *ex officio* a commissioner, equally authorized and required with a judge of the supreme court, in respect to suits and proceedings in the said court, to do and execute every act, power and trust, excepting taxing costs and signing rolls, which according to the practice of the said court, a judge may do and execute out of court; and also to allow writs of *habeas corpus*, and to admit prisoners to bail in all cases and in like manner as any such judge may do.

Court to appoint commissioners to take affidavits:

IX. *And be it further enacted,* That the said court shall by one or more commissions under the seal of the same, from time to time as need shall require, empower such and so many persons as they shall deem fit in every county, to take affidavits of any person desirous to make the same, concerning any cause or matter depending, or any proceedings to be had in the said court or in the court of exchequer, and every affidavit so taken shall be of like force as affidavits taken in the said courts respectively, or before a judge thereof; and that every person who shall commit perjury in any such affidavit, shall incur the same penalties as if such affidavit had been made in open court.

Effect of such affidavits:

Perjury therein punished.

Governor to change place of holding courts in case of sickness or other calamity.

X. *And be it further enacted,* That the person administering the government of this state is hereby authorized, at any time during the vacation of the supreme court, or of any mayor's court, court of common pleas or sessions of the peace, in any city or county, if he shall deem it requisite, by reason of war, pestilence or other public calamity, or the danger thereof, that the then next ensuing term or session of any such court should be held at a different place from the one where such term or session would be to be held by law, to appoint by writing under his hand, and to be recorded in the secretary's office, and published in such and so many public newspapers as he may deem requisite for the due notice thereof, such different place for holding such ensuing term or session as he shall deem most eligible, and at any time thereafter during such vacation to revoke every such appointment, and in like manner to appoint a place anew, or leave such term or session to be held at the place where by law it would have been held; and whenever such term or session shall be held at any place so appointed, all process shall be returned, and all persons shall be held to appear

at such place equally as if such term or session was held at the place where by law the same was to have been held.

C H A P. LXXVII.

An ACT relative to the Court of Probates, the Office of Surrogate, and the Granting of Administrations.

Passed 27th March, 1801.

I. **B**E it enacted by the People of the State of New-York, represented in Senate and Assembly, That the judge of the court of probates of this state, shall be vested with all and singular the powers and authorities, and have the like jurisdiction in testamentary matters, except as is hereinafter otherwise provided, as the governor or commander in chief of the late colony of New-York, had and exercised as judge of the prerogative court, or court of probates of the said colony, except as to the appointment of surrogates in the several counties, who shall be appointed by the person administering the government of this state, by and with the advice and consent of the council of appointment.

Powers of the court of probates.

Surrogates how appointed.

II. *And be it further enacted,* That the present seal shall continue to be the seal of the said court, and the description thereof, deposited and recorded in the office of the secretary of this state, shall there remain as a public record of the same ; *And further,* That the said court shall be held in the city or county of Albany, and that the judge and clerk of the said court shall reside within the said city or county.

Seal of the court.

Court where to be held.

III. *And be it further enacted,* That it shall be lawful for the person administering the government of this state, by and with the advice and consent of the council of appointment, as often as may be necessary, to nominate and appoint a surrogate in each of the counties of this state, who shall hold his office during the pleasure of the said council ; and that the surrogates, now or hereafter to be appointed, shall in all cases, except as to persons who may not at the time of their decease be inhabitants of this state, respectively, have sole and exclusive power to take the proof of the last wills, testaments and codicils of all deceased persons, who at or immediately previous to their death, shall have been inhabitants of the respective counties of such surrogates, in whatever place the death of such persons may have happened, and to make and issue probates of the same, and grant letters testamentary thereon, and also to grant letters of administration of the goods, chattels and credits of all such persons dying intestate, or with the wills annexed, where the same shall be requisite, and that such letters testamentary and letters of adminis-

Surrogates to be appointed in each county :

Their powers

tration shall be made in the name of the people of this state, and tested in the name of the surrogate who shall grant the same, and be sealed with his seal of office.

Surrogates
seal.

IV. *And be it further enacted*, That each of the surrogates hereafter to be appointed, shall at his own expence, cause a seal to be made for his office, in case no seal shall already have been provided, with such device as he shall think proper, upon which seal shall be inscribed the name of the county for which it is to be used, and the words "*Surrogate Seal*," and shall deliver a description in writing of such seal to the secretary of this state, who shall deposit and record the same in his office, and that such seals, and the seals of the several surrogates already so deposited and recorded in the said office, shall there remain as public records of this state, and be deemed the seals of office of such surrogates respectively.

Administra-
tion to whom
granted.

V. *And be it further enacted*, That administration of the goods, chattels and credits of any person dying intestate, shall be granted to the widow or next of kin of the intestate, or some of them, if they or any of them will accept the same, and if not, then, except such intestate died within the city and county of New-York, to any other proper person or persons; *Provided however*, That no administration shall in any case be granted until satisfactory proof be made before the judge of the court of probates or surrogate, to whom application for that purpose shall be made, that the person, of whose estate administration is claimed, is dead and died intestate.

Proviso.

Citation to
the next of
kin when re-
quired.

VI. *And be it further enacted*, That on every application for letters of administration upon the goods, chattels or credits of any person dying intestate, other than in the city and county of New-York, by any person not entitled to the same as next of kin to the intestate, the judge of the court of probates or surrogate, to whom such application shall be made, shall before the granting of the administration issue a citation to the next of kin to the intestate, summoning them to appear and shew cause if any they have, why the administration should not be granted to the person so applying, which citation shall be served upon the next of kin to the intestate, if to be found in this state, and if not to be found in this state, then a copy of such citation shall be affixed up in some public place in the town where the intestate did reside at the time of his death, at least four weeks before the return thereof; and in case such intestate did not reside within this state at the time of his death, then in case of such application to the judge of probates or any surrogate, other than those in the southern and middle districts of this state, a copy of the citation shall be published in the newspaper printed by the printer for this state, for four weeks successively before the return thereof; and in case of such application to any surrogate

Service of ci-
tation.

When & how
the same shall
be published.

in the said southern or middle district, such copy shall be published for the like period in some newspaper printed in the city of New-York ; And in case it shall be represented, that such intestate left no relations entitled to his estate, then a copy of such citation shall also be served upon the attorney general of this state at least twenty days before the return thereof.

VII. *And be it further enacted*, That each of the said surrogates shall record in books to be provided for that purpose at his own expence, all wills proved before him, together with the proof thereof, and all letters testamentary and of administration by him granted, with all things concerning the same ; which records shall be of the same force as the like records in the office of the judge of the court of probates of this state ; *And further*, That all wills proved before the judge of probates or any surrogate, shall upon demand after the same are recorded, be returned to the person who delivered the same, or in case of his death, insanity or removal from this state, shall be delivered to any devisee named therein, or to the heirs or assigns of such devisee, on proof of such death, insanity or removal, by the oath of one or more witnesses to be taken before such judge or surrogate.

Surrogates' records.

Wills when & to whom to be returned.

VIII. *And be it further enacted*, That upon the death or removal from office of any surrogate, the seal of his office, and all original wills, with all records, books and papers belonging to the said office, shall be delivered over to the successor in office, upon the oath of the preceding surrogate, or of his executors or administrators in case of his death.

Successor of surrogate to receive the papers.

IX. *And be it further enacted*, That in all cases where a caveat shall be entered in the office of the judge of the court of probates, or of any surrogate, or any objection be made against the proving of any will, or granting of administration, such judge or surrogate shall cause the parties and witnesses to be cited to appear before him, and hear and determine the matter in controversy, and grant such probates, letters testamentary or administrations as shall be agreeable to law.

Caveat, being entered, the parties to be cited & heard.

X. *And be it further enacted*, That the judge of the court of probates, and the said surrogates respectively, shall upon granting administration of the goods of any person dying intestate, or with the will of such person annexed, take of the person or persons to whom such administration shall be granted, except where the same be granted to a husband of the goods, chattels and credits of his wife, or to the chamberlain of the city of New-York as hereinafter mentioned, sufficient bonds to the people of this state, with two or more competent sureties, in such penalty as such judge or surrogate shall think reasonable, respect being had to the value of the estate, with condition as follows, to wit :

Administrators to give bond :

Form of the
condition.

"THE CONDITION of this obligation is such, That if the above bounden administrator (or, administratrix, as the case may be) of all and singular the goods, chattels and credits of deceased, (with the will of the said annexed, if there be such will, and not administered by as the case may be) do make or cause to be made a true and perfect inventory of all and singular the goods, chattels and credits of the said deceased, which have or shall come to the hands, possession or knowledge of the said or into the hands or possession of any other person or persons for the said and the same so made, do exhibit or cause to be exhibited (where such bond shall be taken by the judge of the court of probates) into the registry of the court of probates of this state (but where such bond shall be taken by a surrogate, into the office of the surrogate of the county of) at or before the expiration of six calendar months from the date of the above written obligation; and the same goods, chattels and credits, and all other goods, chattels and credits of the said deceased at the time of death, which at any time after shall come to the hands or possession of the said or into the hands or possession of any other person or persons for the said do well and truly administer according to law, (or, in case of a will annexed, according to the directions and true intention of the testator, or, testatrix, as the case may be) expressed in the will to the letters of administration granted to the said annexed, and as the law directs. And further, when thereunto lawfully required, do make or cause to be made a just and true account of administration; and (in case of intestacy) if it shall hereafter appear, that any last will or testament was made by the said deceased and the executor or executors therein named, or any person or persons do exhibit the same and request to have it allowed and approved, then if the said being thereunto required do render and deliver the letters of administration granted on the estate of the said deceased, to the office from which the same were issued, then this obligation to be void and of none effect, or else to remain in full force and virtue."

Bonds when
and by whom
to be taken.

Monies recovered
thereon
how applied.

Judge of probates and surrogates to call administrators to account, and decree distribution.

Which bonds shall be valid and pleadable in any court of justice. And in case any such bond shall become forfeited, it shall be lawful for the judge of the court of probates of this state and surrogates, granting administration, in such cases respectively, to cause the same to be prosecuted in any court of record at the request of any party grieved by such forfeiture, and the monies recovered upon such bond shall be applied towards making good the damages sustained by the not performing the said condition, in such manner as the said judge or surrogate (as the case may be) shall by his sentence or decree direct. And further, That it shall be lawful for the judge of the court of probates of this state, or any such surrogate, to call such administrators to account for, and touching the goods, chattels and credits so by them to be administered, and

upon hearing and due consideration thereof, to order and make just and equal distribution of what remaineth clear, after debts, funeral charges and just expences of every sort first allowed and deducted, according to law; and the same distributions to decree and settle, and to compel such administrators to observe and pay the same by due course of law; and also to hear and determine all causes touching any legacy or bequest in any last will and testament, payable or coming out of the personal estate of the testator, and to decree and compel payment thereof, saving to every one the right of appeal.

And payment of legacies.

XI. *And be it further enacted*, That if any person shall neglect or refuse to perform any such sentence or decree of the judge of the court of probates of this state or any surrogate, it shall be lawful for the said judge or surrogate to cause such person, by process directed to any sheriff of any county of this state, to be taken and imprisoned, until such person shall perform the same sentence or decree; and every sheriff is hereby directed to cause all such process to be duly executed, and to confine the persons against whom such process shall be issued as in execution, until they shall be delivered by due course of law; and if any sheriff shall neglect his duty therein, he shall be answerable to the party grieved in like manner as he would be answerable upon process of the like nature issuing out of the supreme court.

Judge of probates and surrogates to enforce decrees by imprisonment.

Duty of the sheriff.

XII. *And be it further enacted*, That in all cases of persons dying out of this state, or of persons dying within this state not inhabitants of this state, their wills may be proved before, and administrations of their personal estates, when necessary, be granted by the judge of the court of probates of this state in the manner heretofore used, as well as by any of the said surrogates.

Judge of probates when to prove wills & grant administration.

XIII. *And be it further enacted*, That in case any surrogate shall be appointed executor of any last will and testament, the probate whereof might otherwise be granted by such surrogate, it shall be lawful for such surrogate to make and sign a renunciation thereof, and to file the same in his office, and then to proceed in respect to the same last will and testament in the same manner as if he had not been nominated as an executor thereof; and if such surrogate shall think proper to act as an executor in the execution of such last will and testament, then the same shall be proved before the judge of the court of probates of this state, who shall grant the probate and letters testamentary thereon, but every such will and probate and the letters testamentary thereon, shall be recorded by such surrogate in the book for recording wills in his office.

Surrogate when appointed executor may renounce and prove the will.

Judge of probates to prove the will, if surrogate acts as executor.

Will and probate in such case to be recorded by the surrogate.

XIV. *And be it further enacted*, That whenever any person shall die intestate within the city and county of New-York, and the widow or next of kin, residing within this

Chamberlain of New-York when to be appointed administrator.

state, shall not apply within one week thereafter to the surrogate of the said city and county, or judge of the court of probates, as the case may be, for administration of the goods, chattels and credits of the deceased, such administration shall be granted to the chamberlain of the said city and his successors in office, who shall take the oath by law appointed to be taken by such administrators, and shall give bond, but without sureties, for the due administration of the said goods, chattels and credits in the form above directed.

Corporation of New-York responsible for the chamberlain.

Administration by him when revocable.

Chamberlain when and to whom to account:

His commission.

Balance in the hands of the chamberlain, unclaimed after notice, to be paid to the corporation,

And applied to the use of the poor.

Special justices in New-

XV. *And be it further enacted*, That the mayor, aldermen and commonalty of the city of New-York, shall in all cases be responsible for the due administration of such goods, chattels and credits by their chamberlain. *And further*, That such administration shall be subject to be revoked upon the application of the widow, child, father, brother or sister of the deceased, if such application be made within three calendar months after the same shall have been granted, and the balance if any due to the said administrator be first paid.

XVI. *And be it further enacted*, That the chamberlain of the said city, shall once in every year, at such time as the said mayor, aldermen and commonalty may for that purpose appoint, exhibit to them in common council assembled, a statement of his receipts and expenditures by virtue of such administrations respectively, which statement shall be published in at least two of the public newspapers printed in the said city, for the information of all whom it may concern; and it shall be lawful for the said chamberlain, in the accounts of the said administration, to charge and retain a commission of five per cent upon his receipts over and above all his reasonable expences in and about the said administrations respectively.

XVII. *And be it further enacted*, That if any balance of any such intestate's estate shall remain in the hands of the said chamberlain above eighteen months after the committing of administration as aforesaid, the amount thereof shall be published in at least two of the newspapers printed in the said city for eight weeks successively, and all persons having any claims upon such estate, shall be notified to exhibit the same with the evidence in support of it within six months thereafter; and after the expiration of the said six months, the said chamberlain shall pay such balance as may remain unclaimed to the said mayor, aldermen and commonalty, who shall be answerable for the same, but without interest, to such persons as shall thereafter appear to be entitled to the same, if any shall appear, and in the mean time all such sums so paid to the said mayor, aldermen and commonalty shall be by them applied towards the support of the poor in the said city.

XVIII. *And be it further enacted*, That upon the death

of any person intestate, not leaving a widow or next of kin within the said city, it shall and may be lawful for the special justices for preserving the peace in the said city, or either of them, to take such measures as they shall think proper for guarding and securing the property and effects of such intestate from waste or embezzlement, until such administration shall be granted as aforesaid, the expences whereof shall be paid by the said administrator in preference to any debts whatsoever, and immediately after the funeral charges of the intestate are discharged.

York when to take charge of the estate of intestates.

XIX. *And be it further enacted*, That any person who may be sued for any thing done by virtue of this act, relative to the estate of any person dying intestate within the city and county of New-York, may plead the general issue and give this act and the special matter in evidence.

Persons sued for things done under this act, to plead the general issue.

XX. *And be it further enacted*, That when any executor or administrator, whose testator or intestate shall have died seised of any real estate, shall discover or suspect that the personal estate of such testator or intestate is insufficient to pay his or her debts, such executor or administrator shall, as soon as conveniently may be, make a just and true account of the said personal estate and debts, as far as he or she can discover the same, and deliver the said account to the judge of the court of probates, or to the surrogate of the county in which probate of the will or administration on the estate of any such testator or intestate shall have been had, and request his aid in the premises: And the said judge or surrogate shall thereupon make an order, directing all persons interested in such estate, to appear before him at a certain day and place, in the same order to be specified, not less than six weeks nor more than ten weeks after the day of making such order, to shew cause why so much of the real estate whereof such testator or intestate died seised, should not be sold as will be sufficient to pay his or her debts; which order shall immediately thereafter be published for four weeks successively in two or more of the public newspapers printed in this state, one of which shall be the paper, if any, published in the county, where probate of any such will shall be had or administration granted; and the said judge or surrogate shall at the time and place specified in such order, or at such other time and place as he may then appoint, hear and examine the allegations and proofs of such executors or administrators, and of all such other persons interested in such estate as shall think proper to make or offer any; and if upon due examination, the said judge or surrogate shall find that the personal estate of such testator or intestate is not sufficient to pay his or her debts, the said judge or surrogate shall order and direct the whole, if necessary, or if not, so much of the real estate of such testator or intestate then remaining unsold to

The estate of testator or intestate, when and in what manner to be sold for payment of debts.

Provido, as to
houses & lots.

be sold as will pay his or her debts ; and when only a part of the real estate is ordered to be sold, such order shall specify as particularly as may be the part so ordered to be sold ; *Provided always*, That where any houses and lots are so circumstanced that a part thereof cannot be sold without manifest prejudice to the heirs or devisees, such judge or surrogate, at his discretion, may order the whole or a greater part thereof than is necessary to pay such debt or debts to be sold, and to distribute the overplus money arising from such sale among the heirs and devisees, as the case may be.

Conveyances
on such sales
by whom
made, & how
to operate.

XXI. *And be it further enacted*, That all sales of any real estate, to be made by order of the judge of the court of probates or a surrogate, shall be made and conveyances for the same executed by the executors or administrators applying for such order ; and the conveyances for the same shall set forth such order at large, and shall be valid and effectual against the heirs and devisees of such testator or intestate and all claiming by, from or under them.

Proceeds of
sales of real
estates to be
deemed assets.

XXII. *And be it further enacted*, That where only a part of the real estate is ordered to be sold as aforesaid, the monies arising therefrom shall be received by the executors or administrators applying for such order, and shall be considered as assets in their hands for the payment of debts ; but where the whole real estate is ordered to be sold, the monies arising therefrom shall be brought into the said court of probates or office of such surrogate ; and if the same after deducting all charges and expences, shall not be sufficient to pay all the debts of the testator or intestate, the said judge or surrogate shall cause the same, after deducting all charges and expences, to be divided among the creditors in proportion to their respective debts, except as is herein before otherwise directed, without giving any preference to bonds or other specialties ;

How distribu-
red if insuffi-
cient.

Notice of dis-
tribution.

Provided always, That before such judge or surrogate shall make any such distribution, he shall cause at least three months notice of the time and place of making the same to be given, by advertising the same in two or more of the public newspapers printed in this state for six weeks successively, one of which said papers shall be the paper, if any, printed in the county where such judge of probates or surrogate shall reside ; *And provided also*, That no part of the real estate of any testator or intestate shall be ordered to be sold as aforesaid, unless the executors or administrators shall have duly made and filed an inventory of the goods, chattels and credits of such testator or intestate before the application for such sale, nor until the executors or administrators shall have applied the personal estate, or such part thereof as may have come to their hands, towards payment of the debts of such testator or in-

Real estate
not to be sold
until personal
estate is ex-
hausted.

testate; and no more of the real estate shall be sold in any case, than may be necessary to pay the residue of the said debts; *And provided also*, That nothing herein contained shall be construed to prevent or bar any person from bringing or maintaining any suit or action against any executor or administrator, for or in respect of the personal estate of his or her testator or intestate, or for or in respect of any waste or misapplication thereof by such executor or administrator.

Suits against executors and administrators not taken away.

XXIII. *And be it further enacted*, That in all cases where a petition shall be presented by any executors or administrators, for the sale of the whole or part of the real estate of their testator or intestate, and one or more of the devisees or heirs of such testator or intestate shall be infants, the judge of the court of probates or the surrogate to whom the same may be presented, shall appoint some discreet and substantial freeholder, a guardian of such infant or infants for the sole purpose of appearing for and taking care of the interest of such infants in the proceedings therein.

Guardians for minors to be appointed when a sale of the real estate is decreed.

XXIV. *And be it further enacted*, That any person claiming to be aggrieved by any sentence, decree or order of any surrogate made in pursuance of this act, may appeal from the same to the judge of the court of probates; *Provided*, such appeal be entered within fifteen days next after the sentence, decree or order appealed from be made.

Appeals from decrees of surrogates.

Proviso.

C H A P. LXXVIII.

An ACT relative to the Duties and Privileges of Towns.

Passed 27th March, 1801.

I. **B**E it enacted by the People of the State of New-York, represented in Senate and Assembly, That the freeholders and inhabitants of the several towns in this State, who are or shall be qualified by law to vote at town meetings, shall assemble together and hold town meetings in their respective towns, on the first Tuesday in April in every year, and then and there choose one supervisor, one town clerk, not less than three nor more than five assessors, one or more collectors, each of whom shall be liable only for the monies which they are respectively directed to collect in such parts of the town as shall be assigned to them by the supervisor, two overseers of the poor, and three commissioners of highways for the same town, each of which town officers before mentioned shall be a freeholder and inhabitant of the same town, and so many constables, fence viewers and pound masters for the same town, being inhabitants of the same town, as to the

Town meetings to be held on first Tuesday in April annually.

Town officers to be chosen.

freeholders and inhabitants of said town so met, or the major part of them, shall seem necessary and convenient, and as many overseers of highways as there are road districts in each of the towns respectively, except in the counties of Suffolk, Queens, Kings and Richmond, and the freeholders and inhabitants of the several towns in those counties, to choose as many overseers of highways as they shall deem necessary and convenient, which said several officers shall hold their respective offices for one year, and until others shall be chosen in their places; and in case any of the officers so chosen in any such town shall refuse to serve, or die, or remove out of the town, or become incapable of serving before the next annual town meeting, then and in every such case, it shall be lawful for the freeholders and inhabitants of such town, to supply every such vacancy in manner aforesaid, at a special town meeting to be notified and held for that purpose, in the manner hereinafter directed; *Provided always*, That from and after the present year, in the several towns in the county of Delaware, and in the towns of Kingston and Lumberland in the the county of Ulster, and in the several counties in the western district, and in the town of Thurman in the county of Washington, the annual town meeting shall be held on the first Tuesday of March in every year; and that all business relating to the said towns which would otherwise be transacted on the last Tuesday of March, shall be transacted on the last Tuesday of February in every year.

Special town meetings to supply vacancies.

Town meetings in certain parts of the state to be held on the first Tuesday of March annually;

And certain business in such towns to be transacted on the last Tuesday in February.

Justices of the peace to preside at town meetings.

If no justice be present, then the town clerk.

If no clerk, then a person shall be chosen to preside.

Persons qualified to vote.

II. *And be it further enacted*, That for the more orderly holding of town meetings, it shall be and is hereby made the duty of the justices of the peace for the time being, to attend at every town meeting hereafter to be held in and for the town in which they respectively reside; and that the said justices of the peace, or such of them as shall attend at such meeting, shall preside at and superintend the same, and take care that the business thereof be orderly and regularly conducted; and shall in case of dispute determine who have and who have not a right to vote or be elected at such meeting according to law; and if no justice of the peace shall reside in the town at the time of holding such meeting, then the clerk of the town who was elected at the last preceding meeting; and in case there shall be no justice of the peace or town clerk attending at any such town meeting, then such person as shall be chosen by the freeholders and inhabitants at such meeting to preside, shall preside at such meeting, and have and exercise all the powers and authorities hereby vested in the justices.

III. *And be it further enacted*, That every male person being a citizen of this state who shall be above the age

of twenty-one years, and shall have resided in any town six months next preceding such town meeting and paid taxes within the same, or shall be possessed of a freehold, or shall have rented a tenement of the yearly value of five dollars for the term of one year within the same, shall have a right to vote at such meeting, and no other person.

IV. *And be it further enacted*, That no town meeting shall be held longer than two days, and shall only be held open between sunrise and sunset, and shall be held at such place in each town as the freeholders and inhabitants thereof at their town meeting shall from time to time appoint.

Where & how long town meetings to be held.

V. *And be it further enacted*, That the freeholders and inhabitants of the city of Albany, shall yearly on the first Tuesday in May, choose one supervisor, two assessors, one collector, being freeholders and inhabitants of the said city, and two constables, being inhabitants of the same city, in each of the wards of the said city; *And further*, That the freemen of the city of Hudson being inhabitants thereof, shall yearly at their annual election of officers within the said city of Hudson, choose one supervisor and such number of assessors, collectors, constables and overseers of the poor of the same city, as the common council for the same city shall from time to time deem necessary and direct to be chosen.

Officers to be chosen in Albany on first Tuesday in May annually

Officers to be chosen in Hudson annually.

VI. *And be it further enacted*, That if any of the said cities or towns shall neglect to choose such officers as aforesaid, or any of them, or in case any of the officers so chosen in and for any city or town shall refuse to serve, or die, or remove out of the city or town for which he shall be chosen, or become incapable of serving before the next annual town meeting or election after he shall be chosen, and the city or town for which he was chosen shall not within fifteen days next after such refusal, death, removal or incapacity happens, choose another in the room of such person, in every such case it shall and may be lawful for any three of the justices of the peace in the same county residing in such city or in or near to such town, and they are hereby required to nominate, and by warrant under their hands and seals to appoint all and every such officers as aforesaid, as the freeholders and inhabitants of the same city or town ought to have chosen as aforesaid; and each of the said officers so appointed shall hold his office for so long time, and have the same powers, and be liable to the same penalties as if he had been elected to the same office by the freeholders and inhabitants of such city or town.

If any city or town aforesaid omits to choose officers or supply vacancies, any three justices to appoint them.

VII. *And be it further enacted*, That each supervisor, town clerk, assessor, commissioner of highways, overseer of highways, overseer of the poor, constable, and fence

Town officers to take an oath.

viewer hereafter to be elected or appointed, shall before he enters upon the execution of his office, and within fifteen days after such election or appointment, take and subscribe an oath before some justice of the peace, in the form hereinafter prescribed for such officers respectively to take, that is to say : Every supervisor shall take and subscribe an oath in the following form, to wit :

Form of oath
of supervisors.

" I do solemnly and sincerely promise and swear, that I will in all things to the best of my knowledge and ability, faithfully and impartially execute and perform the trust reposed in me as supervisor of the (here insert the name of the place) in the county of (here insert the name of the county) and that I will not pass any account or any article thereof wherewith I shall think the said county is not justly chargeable, nor will I disallow any account or any article thereof wherewith I shall think the said county is justly chargeable."

And every town clerk shall take and subscribe an oath in the following form, to wit :

Town Clerk :

" I town clerk of the town of in the county of do solemnly and sincerely promise and swear, that I will faithfully and honestly keep all the books, records, writings and papers by virtue of my said office of town clerk committed, and which shall from time to time be committed unto me, and in all things to the best of my knowledge and understanding, well and faithfully perform the duties of my said office of town clerk without favour or partiality."

And every assessor shall take and subscribe an oath in the following form, to wit :

Assessor :

" I do solemnly and sincerely promise and swear, that I will honestly and impartially assess the several persons and estates within the (here insert the name of the place) in the county of (here insert the name of the county) and that in making such assessments I will to the best of my knowledge and judgment, observe the directions of the several laws of this state directing and requiring such assessments to be made."

And every commissioner of highways shall take and subscribe an oath in the following form, to wit :

Commissioner
of highways :

" I do solemnly and sincerely promise and swear, that I will in all things to the best of my knowledge and understanding, well and faithfully execute the trust reposed in me as a commissioner of highways for (here insert the name of the town and county) without favour or partiality."

And every overseer of the poor, and constable shall take and subscribe an oath in the following form, to wit :

Overseers of
the poor, and
constable :

" I do solemnly and sincerely promise and swear, that I will in all things to the best of my knowledge, understanding and ability, well and faithfully execute and perform the trust reposed in me as an overseer of the poor (or, constable, as the case may be) of the (here insert the name of the

place) in the county of (here insert the name of the county)."

And every overseer of highways and fence viewer, shall take and subscribe an oath in the following form, to wit :

Overseer of highways and fence viewers.

"I do solemnly and sincerely promise and swear, that I will in all things to the best of my knowledge and ability, well, faithfully and impartially execute and perform the trust reposed in me as an overseer of highways, (or, a fence viewer, as the case may be) in the town of (here insert the name of the town) in the county of (here insert the name of the county)."

And further, That every justice of the peace before whom such oath shall be taken and subscribed as aforesaid, shall without fee or reward certify under the same writing the day and year when the same oath was taken, and subscribe his name thereto, and then deliver the same writing to the person taking the same oath, who shall within eight days thereafter, transmit or deliver the same to the clerk of the town for which such officer so taking such oath was elected or appointed ; and if any supervisor, assessor, commissioner of highways, overseer of highways, overseer of the poor, constable or fence viewer of any town, shall not take and subscribe such oath as aforesaid, and transmit or deliver the same to the town clerk as aforesaid within the time hereby limited, or if any collector or constable shall not give such security as is by law required within the time for that purpose limited, then and in every such case such neglect shall be deemed a refusal to serve in such office, and the town in which such officer was chosen may thereupon proceed to a new choice.

Justices to certify such oath & the same to be transmitted to the town clerk.

Omission to take & transmit such oath, or omission of constable or collector to give security when required by law, deemed a refusal to serve.

VIII. And be it further enacted, That if any person hereafter chosen or appointed a supervisor, town clerk, assessor, collector, commissioner of highways, overseer of the poor or constable as aforesaid, shall refuse to take upon him or to serve in such office, or if any such supervisor, town clerk, assessor, commissioner of highways, or overseer of the poor shall proceed in the execution of such office before he shall have taken and subscribed such oath as aforesaid, or if any such collector or constable shall proceed in the execution of his office before he shall have given such security as is or shall be required by law, then and in every such case every person so neglecting or refusing or doing shall forfeit to the people of this state the sum of sixty-two dollars and fifty cents, to be recovered by action of debt, or information in any court of record ; and the attorney general of this state is hereby required to prosecute for all such penalties and forfeitures, and to pay the same when recovered to the treasurer of this state for the use of the people of this state ; and in every such action or information it shall be sufficient to set forth, that the defendant at a certain time and place became indebted to the people of the state of New-York in the sum of sixty-

Penalty on certain officers for refusal to serve, or for acting without taking the oath, or giving security :

How recovered.

Substance of the declaration or information.

two dollars and fifty cents, as a forfeiture incurred by reason that the defendant having been elected or appointed, as the case may be, a supervisor, town clerk, assessor, collector, commissioner of highways, overseer of the poor or constable, as the case may be, did refuse to take upon him and to serve in his said office, or did proceed in the execution of his said office without taking and subscribing the oath by law required, or without giving the security by law required, as the case may be, contrary to the form of the *Act relative to the duties and privileges of towns*, to be paid to the people of the state of New-York aforesaid when he shall be thereunto afterwards required, and to give the special matter in evidence ; *Provided always*, That nothing in this act contained, shall be construed to compel any Quaker or reputed Quaker to act as an assessor or collector, who shall affirm that he hath conscientious scruples about executing the duties of such office.

Quakers when ex-
cluded from
acting as as-
sessors or col-
lectors.

Penalty on
certain other
officers for
like refusal to
serve or take
the oath :

How recover-
ed & applied.

IX. *And be it further enacted*, That if any person hereafter chosen or appointed an overseer of highways, sence viewer or pound master shall neglect or refuse to take upon him the said office, or if such overseer of highways or sence viewer shall proceed in the execution of his office before he shall have taken and subscribed his oath as aforesaid, then and in every such case such person shall forfeit and pay the sum of twelve dollars and fifty cents, to be recovered with costs before any justice of the peace by action of debt, the one moiety thereof to the use of the poor of the town for which such officer was chosen or appointed, and the other moiety thereof with costs of suit to the use of any person who shall prosecute for the same to effect.

New town
clerk entitled
to the papers
from his pre-
decessor.

Penalty on
the person re-
fusing to de-
liver the
same :

How recover-
ed.

Substance of
the declara-
tion or infor-
mation.

X. *And be it further enacted*, That upon the death or expiration of the office of the town clerk of any town, all the records, books, writings and papers belonging to the same office, shall be delivered to the successor in office upon the oath of the preceding town clerk, or in case of his death, upon the oath of his executors or administrators, and if any such preceding town clerk or his executors or administrators shall refuse or neglect to deliver the same upon oath as aforesaid, being lawfully demanded, every such person shall forfeit to the people of this state for every such refusal or neglect, the sum of two hundred and fifty dollars, to be recovered by action of debt or by information in any court of record ; and the attorney general of this state is hereby required to sue for such forfeiture, and pay the same when recovered to the treasurer of this state for the use of the people of this state ; And in every such action or information it shall be sufficient to set forth, that the defendant on the day such demand was made became indebted to the people of the state of New-York in the sum of two hundred and

fifty dollars, as a forfeiture incurred by reason that the defendant did neglect and refuse to deliver to the succeeding town clerk the records, books, writings and papers belonging to the same office, contrary to the form of the *Act relative to the duties and privileges of towns*, to be paid to the people of the state of New-York when he should be thereunto required, and to give the special matter in evidence.

XI. *And be it further enacted*, That the freeholders and inhabitants of each of the said towns are hereby authorized at their respective annual town meetings, or at any other town meeting held for that purpose in their respective towns, from time to time to make such prudential rules and regulations as the majority of the freeholders and inhabitants of such towns respectively, so assembled at their respective town meetings and having a right to vote there, shall from time to time judge necessary and convenient, for the better improving of their common lands in tillage, pasturage or any other reasonable way, and for making, maintaining and amending their partition and circular fences for their lands, gardens, orchards and meadows, and for ascertaining and directing the use and management, and the times and manner of using their common lands and meadows and other commons, and the times, places and manner of permitting or preventing cattle, horses, sheep and swine or any of them to go at large, and for impounding all manner of cattle and creatures whatsoever, and for ascertaining the sufficiency of all partition and other fences, and for making and maintaining such and so many pounds, and at such places as may be necessary and convenient, and for ascertaining and limiting the fees to be taken by the fence viewers respectively, and to impose such penalties on the offenders against such rules and regulations, or any of them, as the majority of such freeholders and inhabitants so assembled shall from time to time deem proper, not exceeding twelve dollars and fifty cents for each offence, to be recovered with costs of suit by the supervisor of the town where the offence shall be committed, in the name of the supervisor of such town, for the use of the same town, by action of debt before any justice of the peace residing in any other town of the same county; and no such action shall be abated or discontinued by the death or expiration of the office of such supervisor, but may be continued and prosecuted to effect by his successor in office; and all such penalties when recovered shall be applied for the use of the town where such offence shall be committed, in such manner, and for such purposes, as the freeholders and inhabitants of the same town where such offence shall be committed, at their town meetings or the majority of them there assembled, shall from time to time

Inhabitants at town meetings to make rules concerning common lands, fences, and cattle running at large, and the keeping of pounds, and the fees of fence viewers

And to impose penalties not exceeding a certain sum.

Penalties how recovered & applied.

Such rules to be recorded by the town clerk.

direct and appoint ; *And further*, That all such rules and regulations so to be made as aforesaid in each town, shall be recorded by the town clerk of the same town in a book by him to be provided for that purpose, and shall remain in full force until the same shall be revoked or altered, or new made in the manner aforesaid at some subsequent town meeting : all which alterations, and new rules and regulations shall also from time to time be recorded as aforesaid, and shall continue in force until revoked, altered or new made as aforesaid.

Inhabitants at town meetings to make provision for destroying noxious wild animals and birds.

And to raise money for that purpose, and for defending their common rights.

XII. *And be it further enacted*, That it shall be lawful for the freeholders and inhabitants of each of the said towns at their respective annual town meetings, or at any other town meeting held for that purpose, to make such provisions and allow such rewards for the destruction of wolves, wild cats, foxes, crows, black birds and other noxious wild animals and birds, and to direct such sum of money to be raised in such town for that purpose, and for prosecuting and defending the common rights of such town, as the major part of the said freeholders and inhabitants so assembled at any such town meeting shall deem necessary and proper ; which money shall be raised and levied together with and in the same manner as the money raised in such town for the support of the poor shall be raised and levied.

Special town meetings when and by whom to be called.

XIII. *And be it further enacted*, That whenever it shall be necessary to hold a town meeting in either of the said towns for any of the purposes required by this act, at any time between any of the said annual town meetings, due notice thereof shall be given by the town clerk in writing under his hand, specifying the time, place and purposes of such town meeting, and fixed up at four or more of the most public places in the same town at least eight days before the time therein appointed for holding such town meeting, and the town clerk of each of the said towns is hereby required to give such notice whenever it shall be necessary to hold such town meeting for electing any of the officers aforesaid in such town, or when he shall be required to do so by any twelve or more freeholders of such town.

Division fences how to be made, &c. disputes concerning them settled.

XIV. *And be it further enacted*, That where the lands or meadows of any two or more persons shall join each other, each of them shall make and maintain a just proportion of the division fence between them, except such persons shall choose to let their lands or meadows lay vacant and open, and in case any disputes shall arise concerning the part or proportion of the fence to be made and maintained by either party, the same shall be settled by the fence viewers of such place where such lands or meadows shall be situated, or any two of them, whose decision shall be conclusive ; and if any person shall neglect or refuse to make

and maintain his or her part or proportion of such fence, or shall permit the same to be out of repair, every such person shall be liable to, and shall pay all such damages as shall accrue to his or her neighbours thereby, to be appraised and ascertained by the fence viewers of the same place, or any two of them not interested therein, and to be recovered with costs in any court having cognizance of the same; and in case the party so neglecting or refusing shall continue such neglect or refusal for the space of one month after notice and request to make or repair such fence, then and in every such case it shall be lawful for the party injured thereby to make or repair all the said fence at the expence of the party so neglecting or refusing, to be recovered with costs of suit in any court having cognizance of the same; and in case any person who shall have made his proportion of any such fence shall conclude or be disposed to throw up his said lands or meadow for common feeding, or to let the same lay open, such person shall give three months notice thereof to the person or persons in possession of the lands or meadow adjoining; and if such fence shall be removed without giving such notice, or before the expiration of the said three months, then the person removing the same shall be liable to make good all such damages as the party injured by such removal shall sustain thereby, to be recovered as aforesaid with costs.

Any person may throw open his land for common on giving three months notice.

XV. *And whereas*, In some parts of this state the fences inclosing meadow and low land are frequently injured, destroyed or carried away by floods and high tides, which generally happen in the spring of the year, and the owners of such meadow or low land lose a great part of the profits thereof for the whole year, unless the said fence be speedily repaired or new made; therefore, *Be it further enacted*, That in all cases where any such partition fence shall be so injured, destroyed or carried away, every person who ought by law to make or repair the same, shall make or repair the same, or his just proportion thereof, within ten days after he shall be thereunto required by any person interested therein, and if any person shall refuse or neglect to make or repair his proportion of such fence for the space of ten days after such request as aforesaid, then it shall be lawful for the party injured thereby, to make or repair all the said fence at the expence of the party so neglecting or refusing, and to recover the same with costs in any court having cognizance thereof.

Fences inclosing meadow and low land how repaired.

XVI. *And be it further enacted*, That when any distress shall be made of any beasts doing damage, the person distraining shall as soon as conveniently may be and within twenty-four hours thereafter, make application to the two nearest fence viewers in the same town to appraise and ascertain the damage, who shall immediately thereupon

Damages done by beasts when & how ascertained and when the beasts to be impounded.

go to the place where such damage shall be committed, and view the damage done and appraise, ascertain and certify under their hands the amount thereof, with their fees for the same; and if any dispute shall arise concerning the sufficiency of the fence it shall be determined by the same fence viewers, whose decision shall be conclusive, and the person making the distress shall as soon as he shall think proper, and within forty-eight hours after making such distress, unless the damage shall be sooner paid, cause the beasts so distrained to be put in the nearest pound in the same county, where they shall remain until the sum so certified by the fence viewers with the fees of the pound master shall be paid, or the beasts so impounded be replevied.

Common
councils in N.
York, Albany
and Hudson
to make rules
concerning
fences.

XVII. *And be it further enacted*, That it shall and may be lawful for the common council of the respective cities of New-York, Albany and Hudson, to make such rules and regulations for making, amending and maintaining the fences in the said cities respectively, as well partition fences as others, as they shall from time to time judge most proper and convenient.

One pound to
be kept in
each city and
town, and
keepers how
appointed.

XVIII. *And be it further enacted*, That there shall be made and kept one sufficient pound in each city and town of this state, and that it shall and may be lawful for the common councils of the several cities of New-York, Albany and Hudson, from time to time to appoint keepers of the pounds in their respective cities, who shall hold their offices during the pleasure of the said common councils respectively; and that the said respective keepers of the said pounds and the respective pound masters in each town may take for all beasts that shall be put into the pound of which he is keeper or master the following fees, to wit: For taking in and discharging every horse, gelding, mare or colt, and all neat cattle twelve and an half cents each, and for every sheep or lamb three cents, and for every hog, shoat or pig six cents, which fees shall be paid to the said keeper or pound master by the owner of the beasts impounded or some person for him, before the said beasts shall be released from such pound, unless the keeper or master of such pound shall otherwise agree concerning the same; and if the owner of any beasts impounded for doing damage, shall not pay the damage and the fees of the keeper or master of the pound with reasonable charges for keeping and feeding them, not exceeding three cents for each beast for every twenty-four hours such beast shall be impounded and fed, within six days after such beast shall be impounded, or replevy the same beasts, then it shall and may be lawful for such keeper or master of such pound to sell such beast at public vendue, giving at least forty-eight hours previous notice of such sale by advertisement to be set up at the said pound, and at the

Fees of pound
masters to be
paid before
the beasts are
released.

If damages &
charges be
not paid,
when & how
beasts im-
pounded may
be sold.

nearest public place to the said pound, and out of the monies arising from such sale to pay the said damage and retain in his hands his fees and charges of feeding and keeping the same beast and of such sale, and return the overplus to the owner of the same beast, and if no such owner shall appear and claim such overplus within six calendar months after such sale, the same shall be paid to the overseers of the poor of the city or town where such beast was impounded for the use of the poor of such city or town.

XIX. *And be it further enacted*, That where any line of any town in this state shall intersect a farm, the possessor of such farm shall pay all his taxes for such farm in the town where his dwelling house shall be.

Taxes of farms divided by a town line, to be paid where the dwelling house shall be.

XX. *And be it further enacted*, That the inhabitants of Hempstead shall have and enjoy the right of oystering, fishing and clamming in the creeks, bays and harbours of North-Hempstead, and the inhabitants of North-Hempstead shall have and enjoy the like rights and privileges in the creeks, bays and harbours of Hempstead.

Privileges of Hempstead & North-Hempstead.

XXI. *And be it further enacted*, That no town in this state shall be divided nor any new town erected without an application to the legislature by the inhabitants of such town so to be divided, or of the several towns out of which such new town is to be erected, or some of them, accompanied with a map of such town or towns, with the lines of such proposed division or new town marked thereon, and that notice of such intended application shall be given at least ten days previous to the town meeting in each of the towns to be affected thereby, which notice shall be in writing and affixed on the door of the house where such town meeting shall be held, and shall be subscribed by at least five persons resident and freeholders in such towns, a copy of which notice shall also be read in such town meeting to the people there assembled by the clerk of such town, immediately before proceeding to the election of town officers.

No town to be divided without previous notice of the intended application for that purpose.

XXII. *And be it further enacted*, That it shall be lawful for the freeholders and inhabitants of the several towns in the counties of Essex and Clinton, at their respective annual town meetings, or at any other town meeting held for that purpose, to make provision for destroying noxious weeds on the lands of any persons who shall be actually resident in the said towns respectively at the exclusive expense of such persons.

Inhabitants of towns in the counties of Essex and Clinton to make provision for destroying noxious weeds.

XXIII. *And be it further enacted*, That the trustees of the towns of Rochester and Marbletown in the county of Ulster, and of the towns of Huntington and Brookhaven in the county of Suffolk, shall respectively be elected on the day of the general election for town officers of the said towns.

Trustees of certain towns when to be elected.

XXIV. *And be it further enacted*, That the freeholders

Inhabitants of the town of

Westchester
to choose
trustees.

Power of the
trustees.

and inhabitants of the town of Westchester in the county of Westchester, may on the day of their annual town meeting, and in the usual manner of electing town officers, choose six freeholders resident in the town for trustees ; and the said trustees or a majority of them shall and may order and dispose of all or any part of the undivided lands within the said town, as fully to every purpose as trustees have been used to do under any patent or charter to the said town, and may continue to lease out the right and privilege of setting up and keeping a ferry across the east river from the said town of Westchester to the town of Flushing in Queens county, in like manner, at the same rates of ferriage, under the same rules and regulations, and for the like purposes as they have lawfully been accustomed to do since the eighteenth day of April, one thousand seven hundred and eighty-five.

C H A P. LXXIX.

An ACT to provide for the Incorporation of Religious Societies.

Passed 27th March, 1801.

Protestant
episcopal
churches how
incorporated.

I. **B**E it enacted by the People of the State of New-York, represented in Senate and Assembly, That it shall be lawful for the male persons of full age, of any church or congregation in communion with the protestant episcopal church in this state, who shall have belonged to such church or congregation for the last twelve months preceding such election, and who shall have been baptized in the episcopal church, or shall have been received therein, either by the right of confirmation, or by receiving the holy communion, or by purchasing or hiring a pew or seat in said church, or by some other joint act of the parties and of the rector, whereby they shall have attached themselves to the protestant episcopal church, and not already incorporated, at any time to meet for the purpose of incorporating themselves under this act, and by a majority of voices to elect two church wardens and eight vestrymen, and to determine on what day of the week, called easter week, the said offices of church wardens and vestrymen shall annually thereafter cease and their successors in office be chosen ; of which first election notice shall be given in the time of morning service, on two Sundays previous thereto, by the rector, or if there be none, by any other person belonging to such church or congregation ; and that the said rector, or if there be none or he be necessarily absent, then one of the church wardens or vestrymen or any other person called to the chair, shall preside at such first election, and

together with two other persons shall make a certificate under their hands and seals of the church wardens and vestrymen so elected, of the day of easter week so fixed on for the annual election of their successors, and of the name or title by which such church or congregation shall be known in law ; which certificate being duly acknowledged or proved by one or more of the subscribing witnesses before the chancellor or one of the judges of the supreme court, or one of the judges of the court of common pleas of the county where such church or place of worship of such congregation shall be situated, shall be recorded by the clerk of such county, in a book to be by him provided for that purpose ; and that the church wardens and vestrymen so elected and their successors in office, of themselves, but if there be a rector, then together with the rector of such church or congregation, shall form a vestry and be the trustees of such church or congregation ; and such trustees and their successors shall thereupon by virtue of this act be a body corporate by the name or title expressed in such certificate ; and that the persons qualified as aforesaid shall in every year thereafter, on the day in easter week so to be fixed for that purpose, elect such church wardens and vestrymen ; and whenever any vacancy shall happen before the stated annual election, by death or otherwise, the said trustees shall appoint a time for holding an election to supply such vacancy, of which notice shall be given in the time of divine service, at least ten days previous thereto, and such election and also the stated annual elections, shall be holden immediately after morning service, and at all such elections the rector, or if there be none or he be absent, one of the church wardens or vestrymen shall preside and receive the votes of the electors and be the returning officer, and shall enter the proceedings in the book of the minutes of the vestry and sign his name thereto, and offer the same to as many of the electors present as he shall think fit, to be by them also signed and certified ; and the church wardens and vestrymen to be chosen at any of the said elections, shall hold their offices until the expiration of the year for which they shall be chosen, and until others be chosen in their stead, and shall have power to call and induct a rector to such church or congregation as often as there shall be a vacancy therein ; *Provided however,* That no meeting or board of such trustees shall be held, unless at least three days notice thereof shall be given in writing under the hand of the rector or one of the church wardens, and that no such board shall be competent to transact any business unless the rector, if there be one, and at least one of the church wardens and a majority of the vestrymen be present, and such rector, if there be one, and if not then the church

Annual elections for church wardens and vestrymen, regulated.

Meetings of the trustees when & how to be held.

warden present, or if both the church wardens be present, then the church warden who shall be called to the chair by a majority of voices, shall preside at every such meeting or board and have the casting vote.

Trustees of
the protestant
Dutch churches :

How they
may be incor-
porated.

How trustees
elected by any
former law
may dissolve
their incorpora-
tion.

The rights of
chartered
churches sa-
ved.

Other religi-
ous societies
how incorpo-
rated.

II. *And be it further enacted*, That the minister or ministers and elders and deacons, and if during any time there be no minister, then the elders and deacons during such time, of every reformed protestant Dutch church or congregation now or hereafter to be established in this state, and elected according to the rules and usages of such churches within this state, shall be the trustees for every such church or congregation ; and it shall be lawful for the said trustees, if not already incorporated, to assemble together as soon as they shall deem it convenient and execute under their hands and seals a certificate certifying the name or title by which they and their successors for ever as a body corporate by virtue of this act shall be known and distinguished ; which certificate being duly acknowledged or proved as aforesaid shall be recorded by the clerk of such county, in a book to be by him provided as aforesaid, and such trustees and their successors shall thereupon by virtue of this act be a body corporate by the name or title expressed in such certificate ; and it shall be lawful for the trustees of any such church or congregation, elected by virtue of any former law of this state, by writing under their hands and seals, to be proved, acknowledged and recorded as aforesaid, to declare their will not to continue any longer a body corporate, and thereupon such body corporate shall cease, and all the estate real and personal held by them shall pass to and be vested in the trustees of such church or congregation made a body corporate in the manner above directed ; *Provided always*, That nothing herein contained shall be construed in any manner to impair or alter the rights of any of the chartered churches within this state.

III. *And be it further enacted*, That it shall be lawful for the male persons of full age belonging to any other church, congregation or religious society now or hereafter to be established in this state, and not already incorporated, to assemble at the church, meeting house or other place where they statedly attend for divine worship, and by plurality of voices to elect any number of discreet persons of their church, congregation or society, not less than three nor exceeding nine in number, as trustees, to take the charge of the estate and property belonging thereto, and to transact all affairs relative to the temporalities thereof, and that at such election every male person of full age, who has statedly worshipped with such church, congregation or society, and has formerly been considered as belonging thereto, shall be entitled to vote,

and the said election shall be conducted as follows : The minister of such church, congregation or society, or in case of his death or absence, one of the elders or deacons, church wardens or vestrymen thereof, and for want of such officers, any other person being a member or a stated hearer in such church, congregation or society, shall publicly notify the congregation of the time when and place where the said election shall be held, at least fifteen days before the day of election ; that the said notification shall be given for two successive Sabbaths, or days on which such church, congregation or society shall stately meet for public worship, preceding the day of election ; that on the said day of election two of the elders or church wardens, and if there be no such officers, then two of the members of the said church, congregation or society, to be nominated by a majority of the members present, shall preside at such election, receive the votes of the electors, be the judges of the qualifications of such electors, and the officers to return the names of the persons who by plurality of voices shall be elected to serve as trustees for the said church, congregation or society ; and the said returning officers shall immediately thereafter certify under their hands and seals the names of the persons elected to serve as trustees for such church, congregation or society, in which certificate the name or title by which the said trustees and their successors shall for ever thereafter be called and known shall be particularly mentioned and described ; which said certificate being proved or acknowledged as above directed, shall be recorded as aforesaid, and such trustees and their successors shall also thereupon by virtue of this act be a body corporate, by the name or title expressed in such certificate ; and the clerk of every county for recording every certificate of incorporation by virtue of this act shall be entitled to seventy-five cents and no more.

Fees of the
county clerk.

IV. *And be it further enacted*, That the trustees of every church, congregation or society herein above mentioned, and their successors, shall respectively have and use a common seal, and may renew and alter the same at their pleasure, and are hereby authorized and empowered to take into their possession and custody all the temporalities belonging to such church, congregation or society, whether the same consist of real or personal estate, and whether the same shall have been given, granted or devised directly to such church, congregation or society, or to any other person for their use, and also by their corporate name or title to sue and be sued in all courts of law or equity, and to recover, hold and enjoy all the debts, demands, rights and privileges, and all churches, meeting houses, parsonages and burying places, with the ap-

Powers of the
trustees of
churches:

Amount of
their authori-
sed annual in-
come.

Further pow-
ers of the
trustees.

purtenances, and all estates belonging to such church, congregation or society in whatsoever manner the same may have been acquired, or in whose name soever the same may be held, as fully and amply as if the right or title thereto had originally been vested in the said trustees; and also to purchase and hold other real and personal estate, and to demise, lease and improve the same for the use of such church, congregation or society, or other pious uses, so as the whole real and personal estate of any such church, congregation or society, other than the corporation of the minister, elders and deacons of the reformed protestant Dutch church of the city of New-York, and other than the first presbyterian church of the city of New-York, shall not exceed the annual value or income of three thousand dollars, and of the said corporation of the minister, elders and deacons of the reformed protestant Dutch church of the city of New-York, the annual value or income of nine thousand dollars, and of the said first presbyterian church of the city of New-York, the annual value or income of six thousand dollars; and also to repair and alter their churches or meeting houses and to erect others if necessary, and to erect dwelling houses for the use of their ministers, and school houses and other buildings for the use of such church, congregation or society, and such trustees shall also have power to make rules and orders for managing the temporal affairs of such church, congregation or society, and to dispose of all monies belonging thereto and to regulate and order the renting the pews in their churches and meeting houses, and the perquisites for breaking of the ground in the cemetery or church yards, and in the said churches and meeting houses for burying the dead, and all other matters relating to the temporal concerns and revenues of such church, congregation or society, and to appoint a clerk and treasurer of their board, and a collector to collect and receive the said rents and revenues, and to regulate the fees to be allowed to such clerk, treasurer and collector, and them or either of them to remove at pleasure and appoint others in their stead; and such clerk shall enter all rules and orders made by such trustees and payments ordered by them in a book to be provided by him for that purpose.

Trustees, ex-
cept of the
episcopal
churches, to
call meetings:

Majority to
act & decide.

V. *And be it further enacted*, That it shall be lawful for any two of such trustees, other than the trustees mentioned in the first section of this act, or their successors, at any time to call a meeting of such trustees, and that a majority of the trustees of any church, congregation or society mentioned in this act being lawfully convened, shall be competent to do and perform all matters and things which such trustees are authorised or required to do and perform, and that all questions arising at any

such meeting shall be determined by a majority of the trustees present, and in case of an equal division the presiding trustee shall have a casting vote.

VI. *And be it further enacted*, That the trustees first chosen according to the third section of this act, shall continue in office for three years from the day of their election, and immediately after such election the said trustees shall be divided by lot into three classes, numbered one, two, and three, and the seats of the members of the first class shall be vacated at the expiration of the first year, of the members of the second class at the expiration of the second year, and the members of the third class at the expiration of the third year, to the end, that the third part of the whole number of trustees as nearly as possible may be annually chosen; and the said trustees or a majority of them, shall at least one month before the expiration of the office of any of the said trustees, notify the same in writing to the minister, or in case of his death or absence, to the elders or church wardens, and in case there shall be no elders or church wardens, then to the deacons or vestrymen of any such church, congregation or society, specifying the names of the trustees whose times will expire, and the said minister, or in case of his death or absence, one of the said elders or church wardens or deacons or vestrymen, shall in manner aforesaid proceed to notify the members of the said church, congregation or society of such vacancies, and appoint the time and place for the election of new trustees to fill up the same, which election shall be held at least six days before such vacancies shall happen; and all such subsequent elections shall be held and conducted by the same persons and in the manner above directed, and the result thereof certified by them, and such certificate shall entitle the persons elected to act as trustees, and in case any trustee shall die or refuse to act or remove within the year, notice thereof shall be given by the trustees as aforesaid, and a new election appointed and held and another trustee be elected in his stead in manner aforesaid.

Trustees how long to continue in office

Rotation in office.

Notice to be given to the trustees whose terms expire.

Elections how to be held.

Special elections to supply vacancies.

VII. *And be it further enacted*, That no person belonging to any church, congregation or society intended by the third section of this act, shall be entitled to vote at any election succeeding the first, until he shall have been a stated attendant on divine worship in the said church, congregation or society at least one year before such election, and shall have contributed to the support of the said church, congregation or society according to the usages and customs thereof; and that the clerk to the said trustees shall keep a register of the names of all such persons as shall desire to become stated hearers in the said church, congregation or society, and shall therein

Members qualified to vote for trustees.

note the time when such request was made, and the said clerk shall attend all such subsequent elections in order to test the qualifications of such electors in case the same should be questioned.

Salaries of ministers to be ascertained by a meeting of persons entitled to elect trustees ;

And paid by the trustees.

Every corporation, and trustees of churches in New-York, Albany and Schenectady to render on oath, once in three years, an account of the estate and revenues of the church.

A neglect of one year thereafter to cause such corporation to cease.

If the annual revenue exceeds the sum limited, the chancellor or judge to whom the account is rendered, to make report to the legislature.

All religious incorporations may receive income to a certain amount.

VIII. *And be it further enacted,* That nothing in this act contained shall be construed or taken to give to any trustees of any church, congregation or society the power to fix or ascertain any salary to be paid to any minister thereof, but the same shall be ascertained by a majority of persons entitled to elect trustees, at a meeting to be called for that purpose, and such salary when fixed shall be ratified by the said trustees, or a majority of them, by an instrument in writing under their common seal, which salary shall thereupon be paid by the said trustees out of the revenues of such church, congregation or society.

IX. *And be it further enacted,* That every corporation and the trustees or persons intrusted with the care and management of the temporalities of any church, congregation or religious society already incorporated, or which may hereafter be incorporated in the cities of New-York, Albany or Schenectady, or a majority of them respectively, shall once in every three years, and between the first day of January and the first day of April triennially, to be computed from the first day of January last, exhibit upon oath to the chancellor, or to one of the justices of the supreme court, or any of the judges of the court of common pleas in the county where such church, congregation or society shall be situated, an account and inventory of all the estate both real and personal belonging at the time of making such oath to the church, congregation or society for which they respectively are trustees or managers as aforesaid, together with an account of the annual revenue arising therefrom ; and if any such trustees or persons intrusted as aforesaid shall neglect to exhibit such account and inventory for a longer space of time than one year, after the expiration of every three years as aforesaid, such trustees or persons intrusted as aforesaid shall from thenceforth cease to be a body corporate. And in every case where it shall appear from such account and inventory that the annual revenue of any church, congregation or religious society in either of the said cities exceeds the sum which by virtue of any charter or law they may or can respectively hold and enjoy, it shall be the duty of the chancellor, justice or judge before whom the same shall be so exhibited, to report the same together with such account and inventory to the legislature at their next meeting.

X. *And be it further enacted,* That it shall be lawful for every religious corporation, created by letters patent under the great seal of the colony of New-York, to have, hold and enjoy, lands, tenements, goods and chattels of

the yearly value of three thousand dollars, although the letters patent by which such corporation was created, shall contain a clause or clauses restricting and limiting the annual revenue and income of such corporation to a less sum than the said three thousand dollars.

XI. *And be it further enacted*, That every corporation of any church, congregation or religious society heretofore made in pursuance of any law of this state, and in conformity to the directions contained in this act, shall be and the same is hereby established and confirmed, and such corporation shall be deemed to have commenced from the time of recording such certificate as aforesaid; and in case of the dissolution of any such corporation or of any corporation hereafter to be formed in pursuance of this act, by reason of a non-compliance with the directions herein contained, the same may be re-incorporated in the manner prescribed in this act, at any time within three years after such dissolution, and thereupon all the estate real and personal formerly belonging to the same, shall vest in such corporation as if the same had not been dissolved; *Provided*, That in such case the said account and inventory required to be exhibited by such corporation in the cities of New-York, Albany and Schenectady, shall be exhibited within one month after such re-incorporation, and triennially thereafter as above directed.

Former corporations confirmed.

Corporations dissolved by non-compliance with this act may be re-incorporated within three years thereafter.

Proviso, as to the exhibition of the account

XII. *And be it further enacted*, That the corporation of the methodist episcopal church in the city of New-York, shall be and hereby are authorized to continue to elect nine trustees of the said corporation, in the same manner as if that number of trustees had originally been named in the certificate of incorporation, and such trustees shall be classed, or continue to be classed in the manner prescribed by the sixth section of this act.

Methodist episcopal church in N. York, certain rights of.

C H A P. LXXXVII.

An ACT to prevent and punish Champerty and Maintenance.

Passed 30th March, 1801.

I. **B**E it enacted by the People of the State of New-York, represented in Senate and Assembly, That no officer or other person shall take upon him any business that is or may be in suit in any court, for to have part of the thing in plea or demand, and no person upon any such agreement shall give up his right to another, and every such conveyance and agreement shall be void. And every person who shall maintain any plea or suit in any court for lands, tenements or other things for to have part or profit thereof, shall be punished by fine or imprisonment,

No person to prosecute for others to have part of the thing in demand :

Such agreement void.

Maintainers of suits punishable by fine and imprisonment.

but this act shall not prohibit any person to have counsel of persons duly licensed for that purpose, or to take counsel of his parents and next friends.

Officers taking land while the same is in plea, or any reward, subject to fine & imprisonment.

II. *And be it further enacted*, That no officer, judicial or ministerial, shall take or receive any lands or tenements in fee, by gift, or by purchase, or to farm, or by champerty, or otherwise, so long as the thing is in plea in any court, nor shall take any reward thereof; and he who doth the contrary, either by himself or by any other, or makes any bargain concerning the same, shall be punished by fine or imprisonment, as well he that purchaseth as he that shall sell the same.

Who are to be deemed conspirators,

And champertors.

III. *And be it further enacted*, That all persons who confederate by oath, agreement or other alliance, falsely and maliciously to indict, or cause to be indicted any person, or falsely to move and maintain any plea or suit, shall be adjudged conspirators; and all persons who move pleas and suits, or cause them to be moved, either by their own procurement, or by others, and sue them at their own proper costs, for to have part of the land or thing in controversy or demand, or part of the gains, shall be adjudged champertors.

Conspirators and maintainers of quarrels may be sued by bill or writ.

Form of the writ.

IV. *And be it further enacted*, That whoever will complain of conspirators and maintainers of false quarrels, and the partakers thereof, may prosecute by bill without writ, or may cause them to be attached, that they be before the justices of the supreme court to answer unto the plaintiff by a writ out of the chancery in form following:

“THE PEOPLE of the State of New-York, to the Sheriff of
Greeting:

“WE COMMAND you that if A. of G. shall make you secure of prosecuting his complaint, then put by gage and safe pledges, C. of D. that he be before our justices of our supreme court of judicature at on to answer the aforesaid A. of a plea of conspiracy and trespass, as the same A. can reasonably show that he ought to answer unto him thereof, and have you there the names of the pledges and this writ.”

Persons maintaining quarrels of others how punished

V. *And be it further enacted*, That no person, by himself or by any other, shall take upon him to maintain quarrels of others, to the let and disturbance of law, upon pain of being punished by fine or imprisonment, and to lose his office if he be an officer.

Persons maliciously indicted out of their county, if acquitted, to recover treble damages.

VI. *And be it further enacted*, That every person who shall maliciously be indicted for any treason, felony or trespass, and who shall dwell in any other county than where such indictment shall be taken and be duly acquitted thereof by verdict, may after such acquittal, have his action upon the case against every procurer of such indictment, and if such procurer be convicted the plaintiff shall recover treble damages.

Gifts and conveyances made for maintenance, void.

VII. *And be it further enacted*, That all gifts and conveyances made for maintenance shall be void.

VIII. *And be it further enacted*, That no person shall buy or sell, or by any ways or means, procure any pretended right or title, or make or take any promise, grant or covenant, to have any right or title of any person to any lands, tenements or hereditaments, unless such person who shall so bargain, sell, covenant or promise the same, or his ancestors, or those by whom he claims the same, have been in possession of the same, or of the reversion or remainder thereof, or taken the rents and profits thereof, for the space of one whole year next before the said bargain, sale, covenant or promise made, upon pain that he who shall make any such bargain, sale, covenant or promise, shall forfeit the whole value of such lands, tenements or hereditaments; and the buyer or taker thereof, knowing the same, shall also forfeit the value of the said lands, tenements or hereditaments; the one half of the said forfeitures to be to the use of the people of this state, and the other half to the party that will sue for the same in any court of record, by action of debt or by information; *Provided always*, That it shall be lawful for any person, being in lawful possession, by taking of the yearly rents or profits of any lands, tenements or hereditaments, to buy or obtain, by any reasonable ways or means, the pretended right or title of any other person thereto.

Persons buying or selling pretended titles to lands, to forfeit the value of the lands.

Provide.

IX. *And be it further enacted*, That no person shall hereafter unlawfully maintain, or cause or procure any unlawful maintenance in any matter or cause whatsoever, in suit and variance concerning any lands, tenements or hereditaments, or any goods, chattels, debts, damages, or offences in any court in this state, or before any person who shall have authority to hear or determine concerning the same; and no person shall unlawfully retain for maintenance of any suit or plea any person, or embrace any freeholders, or jurors, by rewards, promises or other sinister labour or means, to maintain any matter or cause, or to the hindrance or disturbance of justice, or to the procurement or occasion of any false verdict in any court within this state, upon pain to forfeit for every such offence two hundred and fifty dollars, the one moiety thereof to the use of the people of this state, and the other moiety to him who will sue for the same, by action of debt or by information in any court of record.

Persons guilty of maintenance in any cause,

Or retaining others for maintenance, or guilty of embezzlement.

To forfeit 250 dolls.

X. *And be it further enacted*, That if any person shall, by any ways or means, maliciously or for vexation and trouble, cause or procure any other person to be arrested or attached to answer in any court at the suit or in the name of any person, where there is no such person known or without the consent or agreement of such person, in such case every such person who shall so cause or procure any such arrest or attachment, shall for every such offence forfeit and pay to the party so arrested or attached treble the costs, damages and expences that the party so arrested

Persons guilty of vexatious arrests in the name of persons either unknown, or without their consent,

To forfeit treble damages to the party aggrieved,

And 50 dollars to the person whose name is so used.

And to be imprisoned.

and attached shall be put to, by reason of such arrest or attachment, to be recovered by action of debt, or by information in any court of record with costs of suit; and shall also forfeit and pay unto the person in whose name, and at whose suit such arrest or attachment was had, if any such person be known, fifty dollars for every such offence, to be recovered as aforesaid, and shall also upon conviction thereof be imprisoned for a time not exceeding six calendar months.

C H A P. LXXXVIII.

An ACT declaring it to be Felony to steal Bonds, Notes and other Securities for Payment of Money.

Passed 30th March, 1801.

Stealing bills, bonds, notes or public securities made felony, and punishable in like manner as stealing goods of the same value.

BE it enacted by the People of the State of New-York, represented in Senate and Assembly, That if any person shall steal or take by robbery any bill of exchange, bond, order, warrant, bill or promissory note, for payment of any money, or any certificate or other public security issued or to be issued by the authority of the United States, or by authority of the legislature of this state for payment of money, or acknowledging the receipt of money or goods, being the property of any other person or persons, or of any corporation, notwithstanding any of the said particulars are or may be termed in law a chose in action, it shall be deemed and construed to be felony of the same nature and in the same degree and in the same manner as it would have been if the offender had stolen or taken by robbery any other goods of the like value with the money due on such bill, bond, order, warrant, or note, or certificate, or other public security, or secured thereby and remaining unsatisfied, and such offender shall suffer such punishment as he or she ought to have done, if such offender had stolen or taken by robbery other goods of the like value as aforesaid.

C H A P. XC.

An ACT for the Amendment of the Law, and the better Advancement of Justice.

Passed March 30th, 1801.

Defendant in any action may plead the general issue and give the special matter in evidence.

I. BE it enacted by the People of the State of New-York, represented in Senate and Assembly, That it shall be lawful for any defendant or tenant in any action in any court of record, to plead the general issue and to give any special matter in evidence, which if pleaded, would be a bar

to such action, giving notice with the said plea of the matter or several matters so intended to be given in evidence ; *And further*, That if two or more persons dealing together be indebted to each other, and one of them, or his or her executors or administrators, sue any one or more of the others, his or their executors or administrators in any court of this state, if the defendant cannot gainsay the deed or assumption upon which the suit is brought, it shall be lawful for such defendant to plead the general issue as aforesaid, and give notice in writing with the said plea, of what such defendant will insist upon at the trial for his or her discharge, and to give any bond, bill, receipt, account, or contract so given notice of in evidence ; and if such suit be brought on a bond or other contract for the recovery of a penalty for the non-payment of money only, and if any bond, bill or contract with such penalty as aforesaid shall be given in evidence for the plaintiff or defendant upon such trial, in all such cases the sum *bona fide*, and in equity due, and not the penalty, shall be deemed to be the debt due ; and if it shall appear that the debt or sum demanded is paid or satisfied, the jury shall find for the defendant, and judgment shall be entered that the plaintiff take nothing by his writ, bill or plaint, and unless the plaintiff prosecute as executor or administrator, the defendant shall also recover his costs of suit ; and if it shall appear that any part of the debt or sum demanded is paid or satisfied, then so much as is found to be paid or satisfied shall be discounted, and the plaintiff shall have judgment for the residue only with costs of suit ; but if it appears to the jury that the plaintiff is over paid, then they shall find a verdict for the defendant, and certify to the court how much they find the plaintiff to be indebted or in arrear to the defendant more than will answer the debt or sum demanded ; and the sum so certified shall be recorded with the verdict, and the defendant shall have judgment and execution for the same together with costs of suit, unless the plaintiff prosecute as executor or administrator, in which case, the sum so certified shall be deemed a debt of record, to be paid in the course of administration, and the defendant for recovery thereof shall have an action of debt or a *scire facias* against the plaintiff in the said action.

In case of mutual dealings between the parties, defendant may set off his demand against the plaintiff.

If any such suit be on bond the sum in equity due, and not the penalty, to be deemed the debt.

Judgment in cases of set-off, when nothing is due to the plaintiff :

When only a part of his demand is due :

When a balance is due to defendant :

When a balance is so due and plaintiff sues as executor or administrator.

II. *And be it further enacted*, That whenever it shall appear probable in any cause depending in any court of record in this state, as well where executors or administrators are parties as otherwise, that the trial of the same will require the examination of a long account on either side, the said court at any time after issue is joined in such cause is hereby authorised, with or without the consent of parties, to refer such cause by rule to be made at discretion to referees, who shall be three such persons as the court

Causes when and in what manner to be submitted to referees.

Judgment on report of referees, when in favor of plaintiff:

When nothing is reported due to the plaintiff.

When a balance is reported in favour of defendant:

In what manner defendant to recover such balance.

Plea by executor or administrator when sued for the balance so reported against him as plaintiff.

Reasonable allowance on taxing costs to the prevailing party on reference for services & expenses.

shall nominate, unless upon naming them the parties agree upon and name others, or shall elect that three persons be balloted for out of the panel of the jurors, if there be a jury returned for the trial of the cause, in the usual form of balloting for jurors; which referees finally fixed on, shall hear and examine the matters in controversy, and report thereon upon pain of contempt; and an entry shall be made upon the record of such reference, and day shall be given to the parties from time to time, until the referees shall make a report in the premises, or they be thereof discharged; and if the report of the referees, or the major part of them, shall be confirmed by the said court, and any sum be thereby found for the plaintiff, judgment shall be entered for the same with costs, if by law the plaintiff would have recovered costs had a verdict passed in the same cause for the sum so reported to be due; but if the referees or a major part of them shall report, that there is not any thing due to the plaintiff, and the report be confirmed, then judgment shall be entered against the plaintiff, that he take nothing by his writ, bill or plaint, and the defendant shall in such case have judgment for and recover his costs to be taxed against the plaintiff, if by law such defendant would have been entitled to costs if a verdict passed in the same cause for him; and if in any case the referees or the major part of them shall report any sum to be due to the defendant, and the report be confirmed, then judgment shall be entered against the plaintiff, that he take nothing by his writ, bill or plaint; *And further*, The defendant shall recover against such plaintiff the sum so reported to be due with costs of suit to be taxed, and shall have execution for the same, unless the plaintiff prosecute as executor or administrator, in which case the sum so reported with the costs so taxed shall be deemed a debt of record, to be paid in the course of administration, and the defendant for the recovery thereof shall have an action of debt or a *scire facias* against the plaintiff.

III. *And be it further enacted*, That where any such action or *scire facias* shall be brought for the recovery of any sum so found or reported to be due to any defendant, the person against whom such action or *scire facias* shall be brought, may plead that he had fully administered the goods of his testator or intestate at the time of the verdict given or report made, and may give in evidence any payments made by him or judgment obtained against him before that time.

IV. *And be it further enacted*, That upon taxing the costs in all causes so referred, where costs are to be recovered, a reasonable allowance shall be made to the prevailing party, for such services and expences as may accrue upon or attend the reference of the cause, and process of

subpena may issue to convene witnesses before the referees, as is usual on the execution of writs of inquiry of damages, who shall be examined on oath, and there shall be allowed to each referee attending the said business the sum of one dollar for every day necessarily spent in the business of the reference, besides a reasonable allowance for their expenses, which shall be paid by the prevailing party, and shall be allowed upon taxing costs, where costs are recoverable ; *And further*, Each referee before he proceeds to the business of the reference, shall take an oath *faithfully and fairly to hear and examine the cause, and make a true and just report according to the best of his skill and understanding* ; which oath as well as the oaths of the witnesses may be taken before any judge of any court of record or any justice of the peace.

Subpena for witnesses.

Allowance to referees.

Oath of referees.

V. *And be it further enacted*, That where any action of debt is brought upon any single bill, or where any action of debt or *scire facias* is brought upon any judgment, if the defendant hath paid the money due upon such bill or judgment, such payment may be pleaded in bar of such action ; and where an action of debt is brought upon any bond, which hath a condition or defeazance to make void the same upon payment of a less sum at a day or place certain, if the obligor, his heirs, executors or administrators have before the action brought, paid to the obligee, his executors or administrators, the principal and interest due by the condition or defeazance of such bond, though such payment was not made strictly according to the condition or defeazance, it may nevertheless be pleaded in bar of such action, and shall be as effectual a bar thereof as if the money had been paid at the day and place according to the condition or defeazance, and had been so pleaded.

In suits on bill, bond or judgment payment may be plead in bar.

VI. *And be it further enacted*, That if at any time pending an action upon any such bond with a penalty, the defendant shall bring into court all the principal money and interest due on such bond, and also all such costs as have been expended in any suit in law or equity upon such bond, the said money so brought in shall be deemed and taken to be in full satisfaction and discharge of the said bond, and the court shall give judgment to discharge every such defendant of and from the same.

Pending action on bond with a penalty, defendant may bring the sum due with costs into court, and the same shall be a discharge.

VII. *And be it further enacted*, That in all actions prosecuted in any court of record upon any bond, or for any penal sum for non-performance of any covenants in any indenture, deed or writing, or upon any bond with any condition other than for the payment of money, the plaintiff shall assign as many breaches as he may think fit, and the jury upon trial of such action shall assess not only such damages and costs of suit as have heretofore been usually done in such cases, but also damages for such of the

In actions on bonds for performance of covenants, plaintiff may assign breaches to the jury shall assess damages thereon ;

said breaches so assigned as the plaintiff upon the trial of the issues shall prove to have been broken ; and the like judgment shall be entered on such verdict as heretofore hath been usually done in such like actions ; and if the judgment shall be given for the plaintiff on a demurrer, or by confession or *nihil dicit*, the plaintiff may suggest upon the record as many breaches of the covenants, conditions or agreements as he shall think fit, upon which shall issue a writ to the sheriff of the county where the action is laid, to summon a jury to appear in the court where the action is brought, if such court shall sit in the same county where the action is brought, or in case the court in which the action is brought shall not sit in the county where the action is laid, then at the next circuit court to be held in the county where the action is laid, to inquire of the truth of every one of those breaches, and to assess the damages that the plaintiff shall have sustained thereby ; in which writ, if to be executed at the circuit court, it shall be commanded to the justice who shall hold such circuit court, that he make a return thereof to the court from whence the same writ shall issue, at the time in such writ mentioned ; and in case the defendant after such judgment entered, and before any execution executed, shall pay into the court where the action is brought, to the use of the plaintiff or his executors or administrators such damages, so to be assessed by reason of all or any of the breaches of such covenants, conditions or agreements, together with costs of suit, a stay of execution of the said judgment shall be entered upon record ; or if by reason of any execution executed, the plaintiff or his executors or administrators, shall be fully paid or satisfied all such damages so assessed together with his costs of suit, and all reasonable charges and expences for executing the said execution, the body, lands and goods of the defendant shall be thereupon forthwith discharged from the said execution, which shall likewise be entered upon record : but in each case such judgment shall remain as a further security to answer to the plaintiff, and his executors or administrators, such damages as shall be sustained for further breach of any covenant, condition or agreement in the same bond, indenture, deed or writing contained, upon which the plaintiff, or his executors or administrators, may have a *scire facias* upon the said judgment against the defendant, or against his heirs, devisees or ter-tenants, or executors or administrators, suggesting other breaches of the said covenants, conditions or agreements, and to summon him or them respectively to shew cause why execution shall not be had upon the said judgment, upon which there shall be the like proceedings as were in the action of debt upon the said bond or obligation for assessing of

And on judgment by default, confession or demurrer, plaintiff may suggest breaches on the roll, & have damages assessed by a jury.

On payment of the damages assessed & costs, execution to stay ;

Or if damages and costs be levied, defendant to be discharged.

But judgment to remain to answer any further breach

And plaintiff may have a *scire facias* thereon.

damages, upon trial of issues joined upon such breaches or inquiry thereof, upon a writ to be awarded in manner aforesaid; and upon payment or satisfaction in manner as aforesaid of such future damages, costs and charges, all further proceedings on the said judgment shall again be stayed, and so *toties quoties*; and the defendant, his body, lands and goods shall be discharged out of execution as aforesaid.

VIII. *And be it further enacted*, That if any person be arrested by any process issuing out of any court of record at the suit of any common person, and the sheriff or other officer shall take bail from such person against whom such process issued, the sheriff or other officer, at the request and costs of the plaintiff or his lawful attorney, shall assign to the plaintiff the bail bond or other security taken from such bail, by indorsing the same and attesting it under his hand and seal, in the presence of two or more credible witnesses, and if the said bail bond or assignment, or other security taken for bail be forfeited, the plaintiff after such assignment made, may bring an action thereupon in his own name, and the court where the action is brought may by rule of the same court give such relief to the plaintiff and defendant in the original action, and to the bail upon the said bond or other security taken from such bail, as is agreeable to justice; and such rules of the said court shall have the nature and effect of a defeazance of such bail bond or other security for bail.

Bail bonds assignable to plaintiff.

The court by rule to give relief thereon according to equity.

IX. *And be it further enacted*, That if in any action there be two or more plaintiffs or defendants and one or more of them shall die, the action shall not be thereby abated if the cause of such action shall survive, but such death being suggested upon the record, the action shall proceed at the suit of the surviving plaintiff or plaintiffs against the surviving defendant or defendants.

Two or more plaintiffs or defendants &c one dies, but not to the prejudice of the cause of action survives.

X. *And be it further enacted*, That it shall be lawful for any defendant or tenant in any action, or for any plaintiff in replevin in any court of record, with the leave of the same court, to plead as many several matters as he shall think necessary for his defence; *Provided nevertheless*, That if any such matter shall upon a demurrer joined be judged insufficient, costs shall be thereupon given at the discretion of the court; or if a verdict shall be found upon any issue in the said cause for the plaintiff or defendant, costs shall also be given in like manner, unless the judge who tried the said issue shall certify that the said defendant or tenant or plaintiff in replevin had a probable cause to plead such matter, which upon the said issue shall be found against him.

Defendant may plead several pleas with leave of the court.

Provided as to costs thereon.

XI. *And be it further enacted*, That if any material witnesses in any action in any court of record in this state shall

Commission to examine witnesses

abroad when
and in what
manner to
issue :

not reside in this state, it shall be lawful for the said court on affidavit or proof being made thereof to the satisfaction of the said court, and upon motion made by either party in open court, and upon such terms as the said court shall think proper, to award and issue under the seal of the same court a commission to such persons as the same court may think fit, authorizing them, or any two or more of them, to examine such witness on oath upon the interrogatories annexed to such commission, and to reduce such examinations into writing, and to return the same annexed to the said commission unto the said court with all convenient speed ; and the name of every witness to be examined by virtue of any such commission shall be inserted in the same commission, and the interrogatories for the examination of every such witness shall be drawn and signed by the parties or their counsel in the cause in which the testimony is to be used, or such of them as shall request such commission, and be approved of by the same court or one of the judges thereof and shall be annexed to such commission, and each party shall be at liberty with the approbation of such court or judge to insert in such interrogatories all such questions as he may deem proper ; and the said commissioners, or any two or more of them, shall and may examine the witnesses named therein or such of them as they can meet with on oath, and cause the examination of each witness to be reduced to writing and signed by the same witness, and such commissioners shall then also sign the same ; and all such examinations and all exhibits produced to such commissioners and proved by any such witness, shall be annexed to the said commission and returned to the court out of which such commission issued, closed up and under the seals of two or more of the said commissioners ; and if it is not convenient for either of the said commissioners to carry the same to one of the judges of the said court, then one of the said commissioners shall deliver the same to the agent of the party on whose behalf such witnesses shall be examined, and such agent, or in case of his death, the person into whose hands the same shall come, shall deliver the same to one of the judges of the said court, and make oath or affidavit before the same judge, that he received the same from the hands of one of the commissioners, or if such agent be dead, then such affidavit shall set forth in what manner the same came into the hands of the person who shall so deliver the same, and that the same has not been opened or altered since he so received it ; and such judge shall then open the same and indorse upon the commission, as the case may be, either received by the hands of one of the commissioners, or upon the oath of the person who delivers the same as appears by his affidavit, and subscribe his name to the same indorsement, and shall then

How to be ex-
ecuted and re-
turned.

deposit the said commission and return with the said affidavit in the office of the clerk of the said court, there to remain as a record; and every such deposition being so taken and returned shall be allowed and read, and shall be deemed as good and competent evidence in the cause in which it shall be taken as if such witness had been sworn and examined *viva voce* in open court on the trial of such cause; and all parties concerned shall be entitled to take copies of such depositions at their own costs and charges as soon as the same shall be deposited in the clerk's office as aforesaid; and in case any such commission shall not be returned within such reasonable time as the said court shall from time to time allow for that purpose, then the said court may proceed as if no such commission had been awarded.

Effect of depositions so taken.

Parties entitled to copies.

Commission to be returned in a reasonable time, or the cause to proceed.

XII. *And be it further enacted*, That where any issue is or shall be joined, whether the issue roll be filed or not, in any action in any court of record, and the plaintiff shall neglect to bring such issue to be tried according to the course and practice of such court, it shall be lawful for such court at any time after such neglect, upon motion made in open court, due notice having been given thereof, to give the like judgment for the defendant as in cases of nonsuit, unless the same court shall upon just cause and reasonable terms allow a further time or times for the trial of such issue; and if the plaintiff shall neglect to try such issue within the time or times so allowed the said court shall give such judgment as aforesaid; and all judgments so given shall be of the like force and effect as judgments upon nonsuits, and of no other force or effect; and the defendant upon such judgment shall have costs in any action where he would upon nonsuit be entitled to the same, and in no other action whatsoever.

Judgment as in cases of nonsuit for not bringing cause to trial.

Effect of such judgments.

XIII. *And be it further enacted*, That all persons jointly indebted to any other person upon any joint obligation, contract or matter whatsoever, for which remedy might be had at law against such debtors, in case all were taken by process issued out of any court in this state, shall be answerable to their creditors separately for such debts, that is to say, the creditor or creditors of such debtors may issue process against them in the manner now in use, and in case any of such joint debtors be taken and brought into court, he or they so taken and brought in court shall answer to the plaintiff, and in case judgment shall pass for the plaintiff he shall have his judgment and execution against such of them as were brought into court and against the other joint debtors named in the process in the same manner as if they had all been taken and brought into court by virtue of such process; but it shall not be lawful to issue or execute any such execution against the body or against any lands or goods the sole property of any person not brought into court.

Proceedings against joint debtors when all cannot be taken.

How two or more persons bound jointly or severally, in one bond or recognizance may be sued.

XIV. *And be it further enacted,* That where two or more persons are or shall be bound in one bond or recognizance, jointly and severally, or severally only, it shall be lawful in every such case to join all the obligors in such bond or recognizance, or any part of them in one action, and to prosecute the same to judgment and execution against the defendants in such action, and against their joint or separate property; and afterwards if the whole amount due upon such bond or recognizance shall not be levied upon such first suit or judgment, to bring a further action against the residue of the said obligors or any of them jointly or severally, at the option of the plaintiff, and the same to prosecute to judgment and execution against the said residue of the said obligors or any of them, and against their joint or separate property; but the plaintiff shall not cause to be levied in the whole more than the amount of the debt and damages due to him, with the costs of suit; and if separate writs shall be issued against such obligors or any of them, the plaintiff shall be at liberty in any stage of the suits to consolidate them into one suit; and shall in no case when two or more suits are depending at the same time, upon the same bond or recognizance, or on any promissory note or bill of exchange, recover more than the costs of one of the said suits, but where the defendants reside in different counties, and writs are issued in several counties, the costs on each writ shall be taxed together and in the same bill with the costs of such suit.

Costs how far recoverable in such suits.

Clerk to assess damages after interlocutory judgment in actions on covenants and contracts in writing for the payment of money or articles at a stipulated price.

XV. *And be it further enacted,* That when any interlocutory judgment shall be given in any court of law by default, or upon demurrer or confession, in any action upon any bill of exchange, or promissory note for the payment of money, or upon any written contract for a sum certain, though payable in specific articles, or upon a like contract for specific articles at a value or price stipulated in the same contract, or upon a covenant for the payment of money only, instead of awarding a writ of inquiry the court shall direct the clerk of such court, if a court of common pleas, and if the supreme court, then the clerk of the clerk of the said supreme court or the clerk of the court of common pleas of the county where the venue shall be laid, unless the venue shall be laid in the county where the supreme court shall sit, and in such case the clerk of the supreme court only, and it is hereby made the duty of such clerks respectively, to perform the service and to examine, ascertain and determine what sum the plaintiff ought to recover for damages, and either party may except to such report, and upon such exception the court shall hear and examine the matter and cause justice to be done to the parties, and shall give judgment for the plaintiff for the sum so reported, or in

Either party may except to the clerk's report.

case of exception to the report for the sum so ascertained by the court ; and the judgment shall be entered on the record, without entering thereon such reference to the clerk or any of the proceedings in consequence thereof, in the usual form of entering judgments by confession where the amount of the damages is confessed, except that instead of the words "*his damages aforesaid above confessed,*" the following words shall be inserted, that is to say, "*his (or, her, or, their) damages by occasion of the premises (to the sum for which the judgment is given) by the court here assessed,*" or words of like import.

Judgments on reports of the clerk how to be entered.

XVI. *And be it further enacted;* That when any plaintiff shall obtain judgment upon any bail bond taken in any such action, or in any action of debt upon judgment or recognizance, or upon any specialty or contract for the payment of money only, unless the defendant in the original action shall appear and obtain leave to plead therein, the said courts shall direct the clerks respectively as aforesaid ; and it is hereby made the duty of such clerks respectively to perform the service and to examine, ascertain and report to the court the amount of the debt or sum of money due to the plaintiff in the original action, and either party may except to such report, and upon such exception the court shall hear and examine the matter and cause justice to be done to the parties ; and the plaintiff shall cause the sum so reported or ascertained with the amount of the costs in the original suit and in the suit upon the bail bond to be indorsed upon the execution to be issued upon the judgment obtained on such bail bond, and may cause the same and the poundage thereon and no more to be levied by virtue thereof. And when any plaintiff shall obtain judgment upon any bail bond taken in any other action, unless the defendant in the original action shall appear and obtain leave to plead therein, the court shall direct common bail to be filed for the defendant in such original action, and order a judgment to be entered therein by default and award a writ of inquiry thereupon, and upon the return of such writ of inquiry the plaintiff may cause the damages found by the jury with the amount of the costs in the original suit and in the suit upon the bail bond and the poundage thereon and no more to be levied on the judgment on such bail bond, and shall cause the same to be indorsed on the execution to be issued in the action on such bail bond.

Clerk to assess and report damages in like manner in case of judgments on bail bonds taken in such actions.

Upon judgment on bail bonds taken in other actions the court to award a writ of inquiry in the original suit.

XVII. *And be it further enacted;* That in those cases where the courts shall direct their clerks to examine, ascertain and determine what sum the plaintiff ought to recover for damages, it shall not be necessary at any time thereafter to prove the giving or executing any bill of exchange, promissory note, covenant or contract spe-

What shall be sufficient proof of the contract on assessment of damages by the clerk.

Clerk to indorse on the contract the amount of the damages.

cially and truly set forth in the plaintiff's declaration, but the production thereof to the clerk shall be sufficient evidence of the giving or executing of the same, and the clerks shall indorse on such note, bill or contract that judgment hath been rendered thereon and the amount of the damages ascertained therein, and shall respectively sign their names thereto.

Clerk to swear witnesses, and report the testimony when required.

XVIII. *And be it further enacted*, That in those cases where it shall be necessary to adduce evidence to the clerks, they shall be and hereby are authorised to swear any witness or witnesses offered, and shall if required by either of the parties at the time of taking the same, reduce the testimony to writing and shall report the same to the court on being required.

Clerks of counties to appoint deputy clerks,

XIX. *And be it further enacted*, That it shall be the duty of the respective clerks of the several counties within this state to keep some proper person deputy-clerk of the same county during the pleasure of said clerk, and as often as such deputy-clerk shall die or be removed from office or remove out of the county or become incapable of executing the office, another shall be appointed in his place by writing under the hand and seal of the clerk, and every such deputation or appointment shall be recorded in the office of the clerk of the same county, who shall in case of the death of the clerk thereof perform all the duties and receive the emoluments appertaining to the office of clerk of the same county, and be subject to the same penalties that the clerks of the several counties within this state are liable to, until a new clerk for the said county shall be appointed and duly sworn.

Who shall act in case of vacancies by death.

Compensation to witnesses for their services and expences in addition to their fees.

XX. *And be it further enacted*, That each person served with process out of any court of record within this state to testify concerning any matter or cause depending in such court, shall be entitled in lieu of all expences, costs and charges of such witness and in addition to the sum allowed by law, to receive for his reasonable expences from the party for whom he shall be so subpoenaed, upon being served with process, if a resident of the county in which the trial is to be had, fifty cents, and if a non-resident of such county seventy-five cents for each day's travelling to, attending at and returning from such court, computing thirty miles to a day's travelling; and if any person being subpoenaed, upon being tendered with the amount of his reasonable expences to be ascertained as aforesaid, estimating one day's attendance only, shall not thereupon appear according to the tenor of the said process, every person so making default and not having a lawful and reasonable cause for the same, shall forfeit to the party grieved fifty dollars, and shall also yield further recompence to the party grieved according to the loss and hindrance sustained, to be recovered by action of debt,

Penalty on witnesses who make default.

or by information in any court with costs of suit; And further, It shall be lawful to include in the taxation of costs, the sum hereby required to be tendered together with a like allowance for any time more than one day when the attendance of any witness or witnesses may exceed that term.

Allowance to witnesses to be included in the taxation of costs.

XXI. And be it further enacted, That every poor person not of ability to sue and who shall have cause of action against any person, shall have by the discretion of the chancellor writs original or writs of *subpoena*, without paying for the same; and if the suit is to be prosecuted in the court of chancery, the chancellor shall assign to such poor person solicitors and counsel and all other officers requisite for prosecuting the suit, who shall do their duty therein without taking any reward for the same; and if such action is to be prosecuted in any other court, the judges thereof shall by their discretion assign to such poor person attorneys and counsel and all other officers requisite for prosecuting the suit, who shall do their duty therein without taking any reward for the same, and in case any such plaintiff be nonsuited, or a verdict or judgment be given against him, he shall not be compelled to pay any costs in such action.

The courts in their discretion to cause poor persons suing, to be assisted gratis.

XXII. And be it further enacted, That all actions of trespass *quare clausum fregit*, wherein the defendant shall disclaim in his plea or in his notice with the general issue any title or claim to the land in which the trespass is by the declaration supposed to be done, and the trespass be by negligence or involuntary, the defendant shall be admitted to plead or give notice with the general issue of a disclaimer, and that the trespass was by negligence or involuntary, and a tender of sufficient amends for such trespass before the action brought; whereupon or upon some of them if the defendant pleads specially the plaintiff shall join issue, and if any issue to be joined as aforesaid shall be found for the defendant or the plaintiff shall be nonsuited, the plaintiff shall be barred from the said action and all other suits concerning the same.

In trespass *quare clausum fregit* defendant may disclaim and plead tender of amends &c.

XXIII. And be it further enacted, That no dilatory plea shall be received in any court of record unless the party offering such plea do by affidavit prove the truth thereof, or shew some probable matter to the court to induce them to believe that the fact of such dilatory plea is true.

Dilatory pleas to be sworn to.

XXIV. And be it further enacted, That no effoin shall be allowed in any suit, and no person shall be permitted to wage his law in any case, except that of non-summons in real actions.

Effoins and wager of law abolished: Exception.

XXV. And be it further enacted, That all grants and

Grants of lands good

without at-
tornment of
the tenant.

conveyances made since the eighth day of March, one thousand seven hundred and seventy-three, or hereafter to be made by fine or otherwise, of any lands or tenements or rents issuing therefrom, or of the reversion or remainder of any lands or tenements, shall be valid without any attornment of the tenants of any such lands or tenements; *Provided however*, That no such tenant shall be prejudiced by payment of any rent to any such grantor or cognizor, or by breach of any condition for non-payment of rent, before notice given to him of such grant or conveyance.

Proviso.

Warranties
by tenants for
life void.

XXVI. *And be it further enacted*, That all warranties made since the eighth day of March, one thousand seven hundred and seventy-three, or hereafter to be made by any tenant for life, of any lands, tenements or hereditaments, the same descending or coming to any person in reversion or remainder shall be void; and all collateral warranties which have been made since the day and year aforesaid or hereafter to be made of any lands, tenements or hereditaments by any ancestor who had no estate of inheritance in possession in the same at the time of making such warranty, shall be void against his heirs.

Collateral
warranties by
ancestor hav-
ing no estate
of inheritance
also void.

Foreman of
grand juries
to administer
oaths.

XXVII. *And be it further enacted*, That every foreman of a grand jury shall be, from the time of his being appointed until his discharge, authorized to administer the usual oath or affirmation to such witnesses as shall come to give evidence to the grand jury whereof he is foreman.

Attaints on
untrue ver-
dicts abolish-
ed.
Statutes of
England not
in force in
this state.

XXVIII. *And be it further enacted*, That attaints upon untrue verdicts shall be abolished; *And further*, That none of the statutes of England or Great Britain shall be considered as laws of this state.

C H A P. XCI.

An ACT relative to Gaols.

Passed 30th March, 1801.

Gaol in New-
York for
debtors:

I. **B**E it enacted by the People of the State of New-York, represented in Senate and Assembly, That the building now established and used as the gaol of the city New-York, for the confinement of persons on civil process, shall be and continue the gaol of the said city for the confinement of such persons; and that the part of the bridewell in the said city now established and used as the gaol of the said city, for the confinement and safe keeping of all persons charged with or convicted of any crime or misdemeanor, except persons sentenced to imprisonment in the state prison, shall be and continue the gaol of the said city for the confinement and safe keeping of such persons; and the gaol last aforesaid shall be under the

For criminals

The latter
gaol under the

charge of the mayor, aldermen and commonalty of the said city, and the said mayor, aldermen and commonalty, in common council convened, shall from time to time, appoint some proper person to be keeper of the same, who shall hold his office during the pleasure of the said common council, and shall be called *the keeper of the city prison of the city of New-York*, and all commitments of offenders shall be to the keeper of the city prison of the city of New-York; and the said keeper shall keep all persons committed to him as aforesaid in the same manner and under the same penalties as the sheriffs of the other counties in the state ought by law to keep in the gaols of the respective counties the criminals committed to them.

charge of the corporation.

Style of the keeper:

His duties;

II. *And be it further enacted*, That the buildings now established and used as the gaols of the counties of Suffolk, Queens, Kings, Richmond, Westchester, Rockland, Orange, Dutchess, Ulster, Columbia, Rensselaer, Washington, Saratoga, Montgomery, Schoharie, Delaware, Otsego, Herkimer, Tioga, Cayuga, Ontario, Steuben, and of the city and county of Albany, shall be and continue the gaols of the said city and counties respectively.

Gaols in the several counties.

III. *And be it further enacted*, That it shall be lawful for all courts and officers of the county of Greene, in all cases civil and criminal, to confine their prisoners in the gaol of the county of Columbia, until a gaol shall be erected in the said county of Greene, and for all courts and officers of the counties of Oneida, Chenango* and Onondaga, in all cases civil and criminal, to confine their prisoners in the gaol of the county of Herkimer, until a gaol be erected in those counties respectively; *Provided nevertheless*, That as soon as the sheriff of the county of Oneida shall deem the gaol directed to be built in that county, sufficiently finished for the safe keeping of prisoners, the same shall from thence be the gaol of the said county of Oneida, and the sheriff shall remove his prisoners to the said gaol, and such removal shall in no manner be construed an escape.

Temporary gaol for the county of Greene,

And for the counties of Oneida, Chenango and Onondago.

Proviso, as to Oneida.

IV. *And be it further enacted*, That the blockhouses at Willsbrough in the county of Essex, and at Plattsburgh in the county of Clinton, shall when completed be the gaols of those counties respectively, and until other sufficient provision can be made in the premises it shall be lawful for the sheriffs of those counties respectively, at their discretion to confine any of their prisoners in the gaol of the county of Washington.

Temporary & permanent gaols for the counties of Essex and Clinton.

V. *And be it further enacted*, That the liberties of the gaols of the said counties respectively as the same have already been established according to law by the courts of common pleas of the said counties respectively, shall

Liberties of gaols.

* By a subsequent act of this session, the gaol of Otsego county is made the temporary gaol of Chenango county. Editors.

be the liberties thereof as well in counties where gaols are not erected as others, subject to be altered by the judges of the said courts of common pleas of the respective counties, in their discretion, not oftener than once in every year; and where the same have not already been so done in any county, it shall be lawful for the court of common pleas of such county to appoint a certain reasonable space of ground, adjacent the gaol of such county, to be denominated the liberties thereof, subject to be altered as aforesaid; and such court shall cause the same liberties and their limits to be designated by inclosures or posts or other visible marks placed on the outer lines of the said liberties as to them shall seem proper, and the extent of such liberties to be entered on their minutes, which extent shall in no instance comprehend a larger space than three acres, nor extend in any direction to a greater distance than sixty rods; *Provided*, There be ten dwelling houses within such extent.

Proviso.

Duty of sheriffs to grant prisoners the liberties.

On sufficient security by bond.

Sheriff may require new security.

Operation of such bonds.

Proviso.

Spirituous liquors prohibited in the gaols in New-York and Albany.

VI. *And be it further enacted*, That it shall be the duty of the sheriffs of the respective counties to permit any prisoner, who shall be in their custody on civil process only, to go at large within the limits of the respective liberties as aforesaid appointed; *Provided*, Such prisoner shall procure and offer to the sheriff, in whose custody he shall be, a bond with one or more sufficient sureties in the penalty of double the amount of the sum for which such prisoner is confined, conditioned that such prisoner shall remain a true and faithful prisoner, and shall not at any time, nor in any wise escape, or go without the limits of the liberties aforesaid, until discharged by due course of law; *And provided further*, That it shall be lawful for any such sheriff in case he shall discover to his satisfaction any bail so taken to be insufficient, to confine any prisoner so admitted to the benefit of the liberties in the gaol until other good and sufficient bail for the liberties be offered; and every such surety shall be an inhabitant and freeholder within the county where such prisoner shall be confined; and every bond so taken is hereby declared to be valid in law, and to be for the indemnity of such sheriff only; and that any sheriff who may let any prisoner in his custody upon civil process only, go at large within the limits of the liberties aforesaid, shall not be deemed to have incurred an escape; *Provided always*, That nothing in this act contained shall be construed to exonerate the said sheriffs, in case any such prisoner shall escape and go at large without the said limits.

VII. *And be it further enacted*, That no spirituuous liquors shall upon any pretence whatsoever be sold within either of the gaols of the city and county of New-York, or within the gaol of the city and county of Albany, nor shall any kind of spirituuous liquors, except beer of the

quality commonly called table beer and cider, be brought into either of the said gaols for the use of any person therein confined without the permit herein after mentioned.

VIII. *And be it further enacted,* That it shall be lawful for the mayor of each of the said cities, occasionally to appoint one or more physicians in each of the said cities, who are hereby authorised, in cases where they may deem the same necessary or useful, to grant permits in writing under their hands to any person confined in the said gaols, to procure and bring into the same such quantity of spirituous liquors as they may think proper.

Without permit of a physician appointed for that purpose.

IX. *And be it further enacted,* That it shall be the duty of the sheriffs of the said cities, and keeper of the city prison of the said city of New-York, having the custody of the said gaols respectively, to prevent the use of spirituous liquors therein contrary to this act; and if the sheriff of either of the said cities, or the keeper of the city prison of the said city of New-York, shall knowingly suffer or permit any spirituous liquors to be sold or used in their respective gaols contrary to this act, and be thereof convicted before the supreme court or court of oyer and terminer; he shall for such offence forfeit two hundred and fifty dollars for the use of the people of this state.

Sheriffs and keeper of the New-York prison and sheriff of Albany to prevent the use of spirituous liquors:

Penalty for knowingly permitting the same.

C H A P. XCII.

An ACT to provide against infectious and pestilential Diseases.

Passed 30th March, 1801.

I. **B**E it enacted by the People of the State of New-York, represented in Senate and Assembly, That there shall continue to be a health-office in the city of New-York, under the superintendence of three commissioners, who shall consist of a health-officer, and of a physician to be styled the resident physician, and one other person; that the health-officer shall reside at Staten-Island, the resident physician in the city of New-York, and the other commissioner at or near the marine hospital on Staten-Island or in the city of New-York, as a majority of the said commissioners may deem most proper; that the said commissioners shall be appointed by the person administering the government of this state by and with the advice and consent of the council of appointment; *Provided however,* That the persons now holding and exercising the office of commissioners aforesaid, may continue therein until others shall be appointed in their stead; *And provided further,* That it shall be lawful for the mayor, or in his absence the recorder of the city of New-York, in case of the death or resignation of any of the said commissioners,

Commissioners of the health-office in N. York, and their residence.

Proviso.

Further proviso.

to appoint a suitable person to supply such vacancy, until the sense of the council of appointment shall be declared thereon.

Vessels sub-
ject to
quarantine of
course.

II. *And be it further enacted*, That all vessels arriving in the port of New-York, from any port, island or other place in the East-Indies, or from any port, island or other place on the coast of Africa, or from any port, island or other place in the Mediterranean, or from any port, island or other place in the South Seas, or from any port, island or other place in the West-Indies, or from any port, island or other place whatever in America lying to the southward of Georgia, or from any port or other place in the Bermuda Islands, at any time in any year, or from any foreign port, place or island whatever, between the last day of May and the last day of October in any year, shall be subject to quarantine of course, and to the examination of the health-officer, under the regulations herein prescribed; and that all vessels arriving in the port of New-York, from any port, island or other place in the United States south of Sandy-Hook, between the first day of June and the first day of October in any year, shall anchor at the place assigned for quarantine, and shall be subject to such regulations as vessels which are to perform quarantine of course, if on the examination of the health-officer it shall by him be deemed expedient; and that any master or commander of a vessel offending in the premises shall be considered as guilty of a misdemeanor, and on conviction thereof shall for each offence be fined by the court having cognizance of the same, in a sum not exceeding two thousand dollars, or be imprisoned for a time not exceeding twelve months.

Vessels sub-
ject to quar-
antine if ex-
pedient.

Penalty for
breach of
quarantine.

Vessels when
to be unload-
ed & cleansed

Penalty for
disobedience.

III. *And be it further enacted*, That whenever a vessel shall arrive at the anchoring place for vessels at quarantine from a place where a malignant or pestilential fever prevailed, or if during her voyage any person has died or been sick on board with such fever, the master, owner or consignee shall forthwith upon the requisition and under the direction of the health-officer, whose duty it shall be to make such requisition, cause such vessel to be unloaded, cleansed and purified, and that until then no permit shall be granted for her to proceed to the city of New-York; and every master, owner or consignee neglecting or refusing to comply with such requisition of the health-officer, shall be considered guilty of a misdemeanor, and upon conviction thereof shall be fined in a sum not exceeding five hundred dollars, or be imprisoned for a time not exceeding six calendar months, by any court having cognizance thereof.

When bed-
ding & goods
to be landed
and cleansed.

IV. *And be it further enacted*, That whenever any vessel shall arrive at the quarantine ground between the first day of June and the first day of October in any one year, from

a place to the southward of the latitude of Sandy-Hook, the master or person having the charge of such vessel, shall forthwith upon the requisition of the health-officer cause all the wearing apparel, bedding and every other thing on board likely in the opinion of the health-officer to communicate infection to be landed, for the purpose of being cleansed with water or otherwise purified, under the direction of the commissioners of the health-office, by persons to be employed by them; during which cleansing, they shall, if necessary, furnish any indigent person with change of apparel at the expence of the health-office, the same to be afterwards returned to the said commissioners; *Provided*, That it shall not be the duty of the commissioners to employ persons to cleanse and purify any part of the cargo of any vessel; and that until such requisition shall be complied with, no such vessel shall have a permit to proceed to the city of New-York, and that every master or person having charge of a vessel so circumstanced, neglecting or refusing to comply with such requisition, shall be considered guilty of a misdemeanor, and upon conviction thereof be fined in a sum not exceeding two hundred dollars, or be imprisoned for a time not exceeding three calendar months by any court having cognizance thereof.

Provido.

Penalty for disobedience.

V. *And be it further enacted*, That it shall be lawful for the governor of this state, or in his absence the mayor of the city of New-York, or in the absence of both of them, the recorder of the said city, from time to time whenever it shall appear advisable, to issue publicly his order, declaring whatever description of vessels, to be therein designated together with the ports, islands or countries whence they come, shall also be subject to quarantine; that in like manner it shall be lawful for him to issue his proclamation, prohibiting or regulating the intercourse by land and ferries between the city and county of New-York, and any other place where he shall learn that a pestilential or infectious disease doth prevail; and that all persons offending in the premises, shall be liable to punishment as for a misdemeanor by fine and imprisonment, at the discretion of the court having cognizance thereof; *And moreover*, It shall be lawful for the said commissioners of the health-office, to cause any vessel subject to quarantine, which, before she shall have been so visited, examined and reported as aforesaid, shall be brought to anchor elsewhere in the port of New-York, and all vessels, though not described in this act, or in such order as above mentioned, as vessels subject to quarantine, or having on board a person sick with a disease, which in the judgment of the health-officer there is reason to believe is infectious, or having on board articles suspected of containing infectious matter, whether brought from foreign countries, or gen-

When governor or mayor to designate vessels subject to quarantine,

And stop intercourse.

Penalty for offending therein.

Commissioners to cause any vessel suspected to perform quarantine,

And persons
and things on
board to be
landed,

And to apprehend persons coming into this state contrary to orders.

Vessels not to approach the city without permit if liable to examination.

Penalty for disobedience.

How long quarantine to continue.

Duty of pilots touching the premises.

erated or accumulated on board, to be removed to and brought to anchor at the anchoring place for vessels at quarantine; and to cause all persons, articles or things which may have been landed, to be seized and arrested, and to be returned forthwith on board such vessel, or removed to the said hospital. And it shall be further lawful for them to cause all persons, who shall come into this state contrary to the prohibitions and regulations in such order or proclamation as aforesaid to the apprehended, and if well to be conveyed out of this state whence they last came, and if sick to be removed to the said hospital.

VI. *And be it further enacted*, That no vessel subject to the examination of the health-officer, shall approach the city of New-York beyond the place assigned for quarantine without a written permit for that purpose from him; and that the master or commander of every such vessel arriving at the city of New-York, shall within twenty-four hours after such arrival, deliver such permit to one of the commissioners of the health-office resident in the said city; and every master or commander neglecting or refusing to comply with either of these directions, shall for every such offence be considered guilty of a misdemeanor, and on conviction thereof shall be fined by any court having cognizance thereof in a sum not exceeding two hundred dollars, or be imprisoned for a time not exceeding twelve months.

VII. *And be it further enacted*, That quarantine shall continue for such time as to the health-commissioners shall seem proper, and no vessel otherwise subject to quarantine shall be exempted therefrom by reason of having previous thereto entered into any of the ports in the United States, unless such vessel shall have remained in such port for fourteen days; and the several branch-pilots and their deputies belonging to the port of New-York, shall use their utmost endeavours to hail every vessel coming into the said port from sea, and shall ask and demand of the master or commander of every such vessel, whether he has on board any person or persons laboring under any pestilential or infectious disease, or whether there is on board any cloathing or freight containing pestilential or infectious matter, and whether the sickness, if any, broke out on board or existed amongst the inhabitants of the port from whence the vessel last sailed, and on being answered in the affirmative to any of the said questions, shall immediately give notice to the master or commander of such vessel, that he subject his vessel, crew, passengers and cargo to quarantine, and shall forbid them to proceed further than the anchorage assigned for quarantine, and shall direct him to anchor his vessel there, and to remain there until he shall receive further directions from the commissioners of the health-office, or in their default from the governor of

this state, or in his absence from the mayor or recorder of the aforesaid city ; and all such commanders of vessels are strictly forbid from putting on shore any person who belonged to or performed the voyage in such vessel, and from unloading or putting on board of any other boat or vessel any person or persons, cloathing, goods, merchandise or freight from or out of his vessel, until direction to that effect shall be given him pursuant to this act ; and every master or commander of any vessel who shall give false information relative to the condition of his vessel, crew, passengers, freight or cargo, when hailed by any pilot, or shall notwithstanding being forbid by such pilot bring his vessel nearer the city than the ground assigned for quarantine, or land any passenger, or unlade any of his cargo, shall be considered as guilty of a misdemeanor, and on conviction thereof shall be fined by the court having cognizance of the same in the sum of two hundred dollars for each offence ; and every passenger or any other person on board such vessel departing therefrom or unlading any of the cargo thereof, without leave first obtained from the commissioners aforesaid, shall be considered as guilty of a misdemeanor, and be punishable, if convicted, in like manner as the master and commander last mentioned.

Duty of masters of vessels.

Penalty on them for deceit or breach of orders of pilots.

- VIII. *And be it further enacted*, That it shall be the duty of every pilot who conducts a vessel into the port of New-York, to take care that no violations of this act are committed by any person on board, and if any such are committed, and not reported by such pilot to the health-officer as soon as may be, such pilot shall be considered as guilty of a misdemeanor, and shall be fined in a sum not exceeding two hundred dollars ; *And further*, That it shall be the duty of every such pilot to deliver such printed extracts from this act as shall be entrusted to him by the health-officer for that purpose, to every master of a vessel piloted by him into the port of New-York, and that every pilot for neglecting or refusing so to do, shall be deemed guilty of a misdemeanor and punishable as last aforesaid.

Penalty on pilots for breach of duty herein.

IX. *And be it further enacted*, That it shall be lawful for the health-officer, and he is hereby authorized and required without delay, to enter on board of every vessel coming into the port of New-York under the circumstances aforesaid, and there to make strict search, examination, and inquiry as to the health of the officers, seamen and passengers, and into the state and condition of the vessel, her cargo and contents respectively, and to report his discovery and opinion thereon with all speed to the health-office, for the consideration of the commissioners of the health-office, and if any person shall oppose or obstruct the health-officer from performing the duties required of him by this act, he shall be considered as guilty of a misdemeanor, and shall be fined in a sum not exceeding five hundred dollars.

Health-officer authorized to search vessels.

Penalty for obstructing him.

Persons communicating with vessels at quarantine without permit, guilty of a misdemeanor.

Offender how apprehended and punished.

X. *And be it further enacted,* That if any person shall go on board or have any communication or dealings with any vessel lying at quarantine, without permission first obtained in writing with the signature of the health-officer, he shall be considered and adjudged guilty of a misdemeanor, and upon complaint being made by either of the commissioners to one of the justices of the peace for the city and county of New-York, he shall issue a warrant commanding some proper officer to bring the person so complained of forthwith before him, or some other justice of the peace for the city and county of New-York, and the said justice before whom the said offender shall be brought, shall then and there demand of the said offender that he or she shall enter into recognizance with sufficient surety in the sum of one hundred dollars, to appear at the next court of general sessions of the peace, to be holden in the city and county of New-York, to answer unto the said complaint, of which offences the said court is hereby authorized and empowered to take cognizance, and to impose such fines as by them shall be thought proper, not exceeding the sum of two hundred dollars; and if such offender upon being brought before the justice shall neglect or refuse to enter into recognizance as aforesaid, the said justice shall commit him to the common gaol of the city and county aforesaid, commanding the keeper thereof to receive and keep the said offender in the said gaol, until he shall enter into recognizance as aforesaid or be discharged by due course of law; and in all cases mentioned in this act, when offenders are required to enter into recognizance, the justices aforesaid shall if required proceed in manner aforesaid.

Boats prohibited in certain cases from going to the quarantine ground.

XI. *And be it further enacted,* That no boat from any outward or inward bound vessel shall land at the quarantine ground after sunset, nor shall boats of any description at any time pass through the range of vessels lying at quarantine, and that any person offending against either of these directions, shall be considered as guilty of a misdemeanor and shall be fined in a sum not exceeding fifty dollars.

Health-officer to report when vessels are safe;

XII. *And be it further enacted,* That after the said health-officer shall have visited and examined each vessel performing quarantine, it shall be his duty whenever he shall judge the same to be clean, safe and free from infection, to report her to the health-office, that further directions may be given concerning her procedure, and the disposal of whatever freight, cargo or materials she may contain; and for the better performance of his trust the health-commissioners shall furnish him at all times when he shall require it, with a convenient boat, with men sufficient to row the same, and for that end it shall

To be furnished with a boat,

be lawful for them to contract with any person for that purpose; and in order that the said health-officer may be more effectually enabled to make examination whether vessels ought to be subject to quarantine, it shall be lawful for him to put all such questions to the persons on board such vessels as shall be needful and proper to that end, and the persons to whom such questions shall be put may be required to answer the same on oath, which oath he is hereby authorized to administer accordingly, and every person swearing falsely in the premises shall be liable to the pains and penalties of wilful and corrupt perjury.

And to put questions to persons on board vessels on oath.

XIII. *And be it further enacted*, That if in the judgment of the health-officer or resident physician, any vessel arriving in the port of New-York shall require purification, it shall be his duty to direct the time and manner in which such purification shall take place, and the expenses thereof shall be defrayed by the master, commander, owner or consignee of such vessel; and the master, commander, owner or consignee of every such vessel for every neglect or refusal to comply with and to aid in the execution of such direction shall be considered as guilty of a misdemeanor, and on conviction thereof shall be fined by any court having cognizance of the same in a sum not exceeding one thousand dollars.

Vessels when to be purified.

Persons disobeying directions therein to be fined.

XIV. *And be it further enacted*, That if the master, commander, owner or consignee of any vessel arriving in the port of New-York, shall neglect or refuse to remove such vessel to the place and in the time required by the commissioners of the health-office, it shall be the duty of the said commissioners and they are hereby empowered to cause the same to be done at the expense and risk of such master, commander, owner or consignee, and the monies so expended shall be recoverable by the said commissioners with costs, by an action on the case in their own names against such master, commander, owner or consignee in any court having cognizance thereof.

Commissioners of the health-office authorized to remove vessels at their expense.

XV. *And be it further enacted*, That every person keeping a boarding or lodging house in the city of New-York, between the first day of June and the first day of November in any year, shall within twelve hours after any seafaring man or sojourner shall become sick in such boarding or lodging house, report in writing the name of such diseased person to the health-officer; and that no master of a vessel or any other person whatever shall remove any sick person from any vessel lying at any wharf, or in the harbour of the city of New-York, before the name of such sick person has been reported to the health-office and a written permit granted for the purpose of such removal; and that any person neglecting or refusing

Persons sick on boarding houses, to be reported.

Persons sick on board vessels not to be removed without permit.

Punishment
for diseased
cattle.

to comply with either of these directions, shall be considered guilty of a misdemeanor, and be fined in a sum not exceeding one hundred dollars, or be imprisoned for a time not exceeding six months by any court having cognizance thereof.

Cotton, hides,
&c. prohibi-
ted from being
brought into
New-York at
certain times.

XVI. *And be it further enacted,* That no cotton or hides, damaged coffee, or damaged peltry, shall be brought into the city of New-York, between the first day of June and the first day of November in any year, and no coffee or peltry whatever within the period aforesaid, unless authorized by the commissioners of the health-office after having been examined ; and that if any of the articles aforesaid be brought into the said city in violation of this act, it shall be the duty of the said commissioners to seize and sell the same and to apply the neat proceeds thereof to the use of the health-office.

Practitioners
of physic to
visit certain
patients.

XVII. *And be it further enacted,* That every person practising physic in the said city, who shall have a patient labouring under a pestilential or infectious disease, shall forthwith make a report in writing to some one of the said commissioners of the health-office, and for neglecting so to do he shall be considered guilty of a misdemeanor and be fined in a sum not exceeding fifty dollars.

Penalty.

Persons and
things when
to be sent to
the marine
hospital.

XVIII. *And be it further enacted,* That all persons and things within the city of New-York infected by or tainted with pestilential matter, which in the opinion of the commissioners of the health-office ought to be removed from the said city, shall by order of the said commissioners be sent to the marine hospital ; *Provided always,* That the expences in the said marine hospital of all persons who shall at any time be removed thereto from the city of New-York, having gained a legal settlement in the said city, and who shall not have sufficient means to pay for their board, medicine and attendance, shall be deemed to be and shall be borne and paid as part of the contingent expences of the said city.

Expences of
persons at the
marine hospi-
tal how paid.

XIX. *And be it further enacted,* That all persons removed to the said marine hospital, other than those who have paid hospital money, shall be liable to pay a reasonable sum for their board, medicine and attendance therein ; and if any of them deemed to have sufficient means shall refuse or neglect to pay such sum as they may be reasonably charged with, the same shall be sued for and recovered from them by the said commissioners by an action on the case in their own names.

Marine hospi-
tal where, &
how held.

XX. *And be it further enacted,* That the hospital erected on the easterly part of Staten-Island, shall continue to be denominated the marine hospital, and shall, together with the other buildings and improvements made or to be made thereon, at the discretion of the said commissioners, and the land adjoining the same and belonging to the

people of this state, be holden by the commissioners of the said health-office, in trust for the use of the people of this state and the purposes specified in this act ; and all vessels subject to quarantine shall come to anchor as near as may be to the said hospital, which is hereby declared to be the anchoring place for vessels at quarantine ; that the said health-officer shall be physician of the said hospital, and the said commissioners of the health-office shall in other respects have the superintendence thereof, and employ mates, nurses and attendants, and provide bedding, cloathing, fuel, provisions, medicine and such other matters as shall be requisite therein ; and it shall be lawful for them to make reasonable rules and orders for the government and management of the said hospital.

Anchoring place for vessels at quarantine.

Commissioners to make rules for the said hospital, and to superintend it.

XXI. *And be it further enacted,* That no person unless authorised by the health-officer, shall go within a line to be designated upon the land belonging to the people of this state round the marine hospital aforesaid by the commissioners of the health-office, and that every person so transgressing shall be considered guilty of a misdemeanor and be fined in a sum not exceeding one hundred dollars, or be imprisoned for a time not exceeding thirty days by any court having cognizance thereof ; and that the public highway which passes through the said land shall be within four months from the time of passing this act stopped up by the commissioners of highways of the town in which such land is situate, and another public highway opened as near as may be convenient, with the approbation of the health-officer.

Penalty for going within the line round the said hospital.

A new highway to be opened near the same.

XXII. *And be it further enacted,* That every diseased person duly landed or sent to the marine hospital, shall be there kept and maintained until the health-officer shall grant him or her a discharge in writing ; and if before obtaining a discharge as aforesaid any such person shall elope or be absent beyond the line limited and designated as above mentioned, it shall be lawful for the health-officer or any constable or other person whom he shall call to his assistance, and they are hereby enjoined and required to pursue and apprehend the person so eloped or absent, and there again deliver him or her, to be detained until discharged as aforesaid ; and any person so eloping or absconding from the marine hospital, or any diseased person in the marine hospital refusing or neglecting to obey the directions of the health-officer and the orders and regulations of the commissioners of the health-office, shall be considered as guilty of a misdemeanor, and as such shall be punishable by any court having cognizance thereof.

Persons diseased and eloping from the hospital, how apprehended and punished

XXIII. *And be it further enacted,* That the master, commander or owner of every vessel, leaving any seaman or sailor belonging to such vessel sick in the said hospital, other than those seamen who pay hospital money, shall pay un-

Expenses of sick seamen at the hospital, by whom borne.

to the commissioners such sum or sums of money as have been expended on him or them for their board, attendance and medicine during the time they were in the said hospital, to be sued for and recovered from such master, commander or owner by the said commissioners by an action on the case in their own names.

Vessels at
quarantine to
have a signal
in the shrouds

Penalty for
disobedience
herein.

XXIV. *And be it further enacted*, That colours, designating a vessel subject to quarantine, shall be fixed in the main shrouds, halfway between the main deck and the topmast of such vessel, and there remain until the expiration of her quarantine, and that if the master or commander of any such vessel shall not comply with this direction, or if the master or commander of any vessel not subject to quarantine shall exhibit such signal or continue such signal after being ordered by the health-officer to remove it, he shall forfeit for every such offence the sum of fifty dollars, and the further sum of three dollars for every hour he shall so offend, to be recovered by the commissioners of the health-office with costs in an action of debt in their own names in any court having cognizance thereof.

Pilots when
to be removed
or bound over
to court.

XXV. *And be it further enacted*, That upon complaint being made in writing by one or more of the commissioners of the health-office to the wardens of the port of New-York, charging any pilot with neglect or violation of any of the duties herein prescribed or enjoined upon him, it shall be the duty of the said wardens of the port forthwith to suspend such pilot from piloting any vessel until he shall have entered into recognizance before one of the justices of the peace for the city and county of New-York in the sum of two hundred dollars with sufficient sureties, to answer to the offence wherewith he is charged, at the next general sessions of the peace to be held in the city and county of New-York; which offence the said court is hereby authorized to try and determine, and to impose such fine as they may deem proper, not exceeding the sum of one hundred and twenty-five dollars; and it shall be the duty of every pilot who shall conduct any vessel subject to quarantine into the port of New-York, to land immediately at the health-office stairs and to leave at the said health-office in writing subscribed by him the name of such vessel and also the name of her commander, and the name of the place from which she last came or sailed; and every pilot neglecting or refusing to perform any of the duties required of him by this act, or permitting any vessel or boat to come along side of such vessel which such pilot shall have the direction of, or permitting any thing to be thrown into such vessel or boat, shall in addition to the above penalties, forfeit for every such offence the sum of twenty-five dollars, to be recovered by the commissioners of the health-office with costs in an action of debt in their own names in any court having cognizance thereof.

Duties of pi-
lots conduct-
ing vessels
subject to
quarantine:

Penalty for
disobedience
therein.

XXVI. *And be it further enacted,* That it shall be lawful for the said health-officer, whenever he shall judge it necessary to prevent infection, to cause any bedding and cloathing arriving in a vessel subject to quarantine to be destroyed ; and that it shall be lawful for the commissioners of the health-office, when in their opinion it shall be necessary for the public safety, to procure and employ occasionally medical advice and assistance, the expence of which shall be considered and settled as part of the contingent expences of the city and county of New-York.

Bedding when
to be destroy-
ed.

And medical
assistance pro-
cured.

XXVII. *And be it further enacted,* That all the fines and penalties imposed and received under this act shall be paid to the said commissioners, to be by them applied towards defraying the expence of the health-office.

Fines and pe-
nalities under
this act how
applied.

XXVIII. *And be it further enacted,* That the said commissioners or either of them are hereby authorized and required to demand and receive, and in case of neglect or refusal to sue for and recover in their own names or in the name of either of them, with costs of suit, from the captain or commander of every vessel which shall hereafter enter the port of New-York from any foreign port, the following sums of money, to wit: For each captain or commander or cabin passenger one dollar and fifty cents ; for each steerage passenger seventy-five cents, and for each mate, sailor or mariner seventy-five cents ; which several sums shall be demandable of the captain or commander of every such vessel, and on payment thereof every such captain or commander shall and may lawfully demand and receive from every such person on whose account respectively the same shall have been paid the monies so paid ; and the said monies so to be received by the said commissioners or either of them shall be appropriated by them to the use of the health-office, deducting therefrom the sum of two and an half per cent which they are hereby authorized to retain as a compensation for collecting the same.

Charges pay-
able to the
commission-
ers of the
health-office
by every cap-
tain, passen-
ger and sailor
of vessels en-
tering New-
York from a
foreign port :

How applied.

XXIX. *And be it further enacted,* That the compensation of the resident physician, and of the other commissioner, other than the health-officer, shall be to each of them one thousand dollars per annum, to be paid out of the monies by this act appropriated for compensating the commissioners of the health-office ; and that the health-officer shall be entitled to receive as physician to the said hospital, the sum of five hundred dollars per annum to be paid as aforesaid, and also for his services in searching and examining vessels from foreign ports in pursuance of this act, the sum of seven dollars and fifty cents for each vessel so by him examined, to be paid by the master or commander of the same ; and for visiting coasting vessels in pursuance of this act, when subject to quarantine, the sum of four dollars for each vessel so visit-

Compensation
to the com-
missioners of
the health-of-
fice.

to the commissioners such sum or sums of money as have been expended on him or them for their board, attendance and medicine during the time they were in the said hospital, to be sued for and recovered from such master, commander or owner by the said commissioners by an action on the case in their own names.

Vessels at
quarantine to
have a signal
in the shrouds

Penalty for
disobedience
herein.

XXIV. *And be it further enacted*, That colours, designating a vessel subject to quarantine, shall be fixed in the main shrouds, halfway between the main deck and the topmast of such vessel, and there remain until the expiration of her quarantine, and that if the master or commander of any such vessel shall not comply with this direction, or if the master or commander of any vessel not subject to quarantine shall exhibit such signal or continue such signal after being ordered by the health-officer to remove it, he shall forfeit for every such offence the sum of fifty dollars, and the further sum of three dollars for every hour he shall so offend, to be recovered by the commissioners of the health-office with costs in an action of debt in their own names in any court having cognizance thereof.

Pilots when
to be removed
or bound over
to court.

XXV. *And be it further enacted*, That upon complaint being made in writing by one or more of the commissioners of the health-office to the wardens of the port of New-York, charging any pilot with neglect or violation of any of the duties herein prescribed or enjoined upon him, it shall be the duty of the said wardens of the port forthwith to suspend such pilot from piloting any vessel until he shall have entered into recognizance before one of the justices of the peace for the city and county of New-York in the sum of two hundred dollars with sufficient sureties, to answer to the offence wherewith he is charged, at the next general sessions of the peace to be held in the city and county of New-York; which offence the said court is hereby authorized to try and determine, and to impose such fine as they may deem proper, not exceeding the sum of one hundred and twenty-five dollars; and it shall be the duty of every pilot who shall conduct any vessel subject to quarantine into the port of New-York, to land immediately at the health-office stairs and to leave at the said health-office in writing subscribed by him the name of such vessel and also the name of her commander, and the name of the place from which she last came or sailed; and every pilot neglecting or refusing to perform any of the duties required of him by this act, or permitting any vessel or boat to come along side of such vessel which such pilot shall have the direction of, or permitting any thing to be thrown into such vessel or boat, shall in addition to the above penalties, forfeit for every such offence the sum of twenty-five dollars, to be recovered by the commissioners of the health-office with costs in an action of debt in their own names in any court having cognizance thereof.

Duties of pi-
lots conduct-
ing vessels
subject to
quarantine:

Penalty for
disobedience
therein.

XXVI. *And be it further enacted,* That it shall be lawful for the said health-officer, whenever he shall judge it necessary to prevent infection, to cause any bedding and cloathing arriving in a vessel subject to quarantine to be destroyed ; and that it shall be lawful for the commissioners of the health-office, when in their opinion it shall be necessary for the public safety, to procure and employ occasionally medical advice and assistance, the expence of which shall be considered and settled as part of the continuing expences of the city and county of New-York.

Bedding when to be destroyed.

And medical assistance procured.

XXVII. *And be it further enacted,* That all the fines and penalties imposed and received under this act shall be paid to the said commissioners, to be by them applied towards defraying the expence of the health-office.

Fines and penalties under this act how applied.

XXVIII. *And be it further enacted,* That the said commissioners or either of them are hereby authorized and required to demand and receive, and in case of neglect or refusal to sue for and recover in their own names or in the name of either of them, with costs of suit, from the captain or commander of every vessel which shall hereafter enter the port of New-York from any foreign port, the following sums of money, to wit: For each captain or commander or cabin passenger one dollar and fifty cents ; for each steerage passenger seventy-five cents, and for each mate, sailor or mariner seventy-five cents ; which several sums shall be demandable of the captain or commander of every such vessel, and on payment thereof every such captain or commander shall and may lawfully demand and receive from every such person on whose account respectively the same shall have been paid the monies so paid ; and the said monies so to be received by the said commissioners or either of them shall be appropriated by them to the use of the health-office, deducting therefrom the sum of two and an half per cent which they are hereby authorized to retain as a compensation for collecting the same.

Charges payable to the commissioners of the health-office by every captain, passenger and sailor of vessels entering New-York from a foreign port :

How applied.

XXIX. *And be it further enacted,* That the compensation of the resident physician, and of the other commissioner, other than the health-officer, shall be to each of them one thousand dollars per annum, to be paid out of the monies by this act appropriated for compensating the commissioners of the health-office ; and that the health-officer shall be entitled to receive as physician to the said hospital, the sum of five hundred dollars per annum to be paid as aforesaid, and also for his services in searching and examining vessels from foreign ports in pursuance of this act, the sum of seven dollars and fifty cents for each vessel so by him examined, to be paid by the master or commander of the same ; and for visiting coasting vessels in pursuance of this act, when subject to quarantine, the sum of four dollars for each vessel so visit-

Compensation to the commissioners of the health-office.

ed by him in person, to be paid by the master or commander thereof; and the health-officer shall also be entitled to receive from the master or commander of every vessel arriving in the port of New-York from any port, island or other place in the United States south of Sandy-Hook, between the first day of June and the first day of October in any year, the sum of four dollars for each vessel above one hundred tons, and the sum of two dollars for each vessel of or below one hundred tons so visited by him, excepting all boats arriving in the harbour of New-York from any port or harbour on the shores of New-Jersey, between Sandy-Hook and Cape-May, or any part of Long-Island.

Commissioners
to account an-
nually to the
comptroller.

XXX. *And be it further enacted,* That it shall be the duty of the said commissioners to account annually to the comptroller for all monies received by them for the use of the health-office, and if the same shall in any one year be more than sufficient to defray the expence of executing the trust committed to them, exclusive of such expences as are to be borne and paid as part of the contingent charges of the city of New-York, and including the annual compensations herein before granted to the said commissioners, then and in such case the said commissioners shall pay the residue thereof into the treasury of this state; and if at any time the money received by the said commissioners should not be sufficient for the purposes aforesaid, it shall be lawful for the person administering the government of this state, upon the application of the said commissioners, to direct the comptroller to issue a warrant to the treasurer to pay to the order of the said commissioners such sum as he may think necessary for the purposes aforesaid, not exceeding in the whole two thousand five hundred dollars in any one year.

Deficiencies in
the funds ap-
propriated to
their use how
supplied.

Commission-
ers to make
and execute
rules relative
to cleansing
the streets,
&c. in New-
York.

Expences
how borne.

Provide.

XXXI. *And be it further enacted,* That it shall be lawful for the said commissioners of the health-office or a majority of them as they shall judge advisable, to make and execute rules and orders for cleansing and scouring the streets, alleys, passages, curtilages, sewers, yards, cellars, vaults, sinks and other places where filth and corruption collected within the said city, and for removing all offensive, noxious or putrid articles or substances which may be stored or otherwise collected within the said city; and all necessary expences for carrying the said rules and orders into effect, where the same relate to the cleansing of such places as are not the property of private individuals, shall be deemed as part of the contingent expences of the said city, and the monies for defraying the same shall be raised in like manner as the other contingent expences of the said city; and where the same shall relate to the cleansing such places as are the property of individuals, such expences shall be paid by the owners or occupiers thereof; *Provided*

All such rules and orders shall be reported to and may be suspended or repealed at any time by the person administering the government of this state.

XXXII. *And be it further enacted,* That whenever the city of New-York or any part thereof shall be annoyed or rendered foul by any manufactory, trade, work or business producing noxious vapors or highly offensive smells, or by any place where noxious or putrid substances shall be stored or collected within the said city, it shall be the duty of the said commissioners or a majority of them, if in their opinion the public health or that of individuals shall be endangered thereby, to proceed forthwith to such place or places and to make due inquiry and strict examination respecting the same; and that it shall be lawful for them or either of them whenever it may be necessary, to require the aid or assistance of a justice of the peace and constable in making of such inquiry and examination, who are hereby authorized and required to break open, whenever admittance cannot otherwise be obtained, the door or doors of such place where such manufactory, trade, work or business is carried on, producing or affording such noxious vapor or highly offensive smell, or where such offensive substances are deposited; and if the said commissioners or a majority of them shall judge any such manufactory, trade, work, business or repository to be carried on or kept in such manner as to be a nuisance, they shall declare it so in writing to the owner thereof or in his absence to such workman, clerk, keeper or one of the family as they may then find on the premises, and at the same time shall require the removal, abatement or discontinuance of the said nuisance, as the case may require, within the time to be limited in the said writing; and if on the expiration of the said time, the same order shall not have been complied with, it shall be the duty of the mayor or recorder of the said city, upon representation thereof to either of them made by the said commissioners or a majority of them, immediately to issue a warrant under the hand and seal of the said mayor or recorder, directed to the sheriff of the said city, commanding him forthwith without delay to cause to be removed, abated or discontinued such nuisance; and the person to whom such declaration and requisition in writing as aforesaid shall be made, shall besides for not complying therewith be considered as guilty of a misdemeanor, and on complaint being made thereof in writing by any one or more of the said commissioners to any one of the justices of the peace of the said city, it shall be the duty of such justice to bind the person so complained of in a recognizance with sufficient surety in the sum of two hundred dollars, for his appearance at the next general sessions of the peace in the said city, to

Trades and offensive substances injurious to health, and becoming nuisances, to be removed:

By the party:

By the sheriff.

Party refusing liable to a fine

answer to the said charge, and on due proof thereof it shall be lawful for the said court to impose a fine on the person or persons so offending in a sum not exceeding one hundred dollars, out of which fine the expences of removing, abating or causing to be discontinued such nuisance shall be paid.

This act not to affect remedy at common law.

XXXIII. *And be it further enacted*, That nothing in this act contained shall be construed to interfere with the remedies against nuisances prescribed by the common law.

Quarantine how regulated in the other ports and harbors of this state :

XXXIV. *And be it further enacted*, That all vessels having on board any person infected with any malignant or pestilential fever or coming from any place whatsoever infected therewith, shall not come into any of the ports or harbors of this state, until they shall have performed quarantine for such time and in such manner as the persons hereinafter mentioned shall think proper to direct, to wit : For the cities of Albany and Hudson, and upon Hudson's river opposite to the said cities, and within one mile above or below the same, the person administering the government of this state, and in his absence from the said cities respectively the mayor, and in his absence the recorder of the said cities respectively ; and for any town in this state bordering or lying upon any port or harbor of this state, and upon the waters opposite to the same towns, any two or more justices of the peace residing therein ; and if any person subject to quarantine as aforesaid shall violate any of the regulations to be prescribed respecting the same as aforesaid, he shall be considered guilty of a misdemeanor and shall be fined by any court having cognizance thereof in a sum not exceeding five hundred dollars.

Branches thereof how punished.

Measures to be taken against the introduction of infectious diseases in this state.

XXXV. *And be it further enacted*, That it shall be lawful for the said persons hereby authorized to execute this act in the said cities of Albany and Hudson, and for any two or more justices of the peace in any town in this state, to take effectual measures to prevent the introduction and spreading of any infectious distemper into any part of this state, and for that purpose to stop, detain and examine any person coming from any place infected with any such malignant or pestilential fever, and if there shall be good cause to suspect any person to be infected therewith, it shall be lawful for the several persons aforesaid, to cause every such person to be sent out of this state, not being an inhabitant thereof, or kept in such place as will not expose the inhabitants of the same to take such distemper ; *And further*, To appoint and authorize such and so many persons to aid in the execution of their powers aforesaid as they shall respectively deem proper.

Health physician to be ap-

XXXVI. *And be it further enacted*, That it shall be lawful for the person administering the government of

this state by and with the advice and consent of the council of appointment, to appoint a physician in each of the cities of Albany and Hudson, to assist in carrying into effect the provisions contained in the two preceding sections of this act, and such physician who shall examine any vessel coming from a foreign port shall be entitled to receive from the commander thereof the sum of seven dollars and fifty cents.

pointed for
Albany and
Hudson.

C H A P. XCVIII.

An ACT for regulating Trials of Issues, and for returning able and sufficient Jurors.

Passed 31st March, 1801.

I. **B**E it enacted by the People of the State of New-York, represented in Senate and Assembly, That all issues to be joined in the supreme court, or in any other court and brought into the supreme court to be tried, and which may be triable by a jury, shall be tried in the proper county where the lands, tenements or hereditaments in question shall be or the cause of action shall arise, unless the said supreme court upon motion of either party shall think proper to order the trial to be at the bar of the said court, which shall only be done in cases of great difficulty, or which require great examination; but this section shall not extend to any action merely transitory, nor prevent the said court from ordering trials by foreign juries in all cases where it shall be proper.

Issues in supreme court, except in actions merely transitory, to be tried where the lands lie or cause of action arose.

Trials at bar only in cases of difficulty.

II. *And be it further enacted,* That whenever any such issue is to be tried at any circuit court or sittings, the tenor or transcript of the record with a respite of the jury, or an award of process for their appearance to the supreme court at the next term, unless the justices of the supreme court, some or one of them, at the day and place appointed for holding the said circuit court or sittings, at which such issue is or ought to be tried shall sooner come, shall be made, and sent under the seal of the said supreme court to such of the justices of the same court as may hold the said circuit court or sittings, in the county where such issue is or ought to be tried; and a similar clause shall be inserted in the process for the appearance of the jury at the said circuit court or sittings; and if one party demand and have such tenor or transcript of the record aforesaid to deliver to such justices or justice before whom such issue is to be tried, another tenor or transcript of the same record shall be made and delivered to the other party if he require the same.

Record to be sent under seal to the circuit court or sittings.

Clause to be inserted in the jury process for circuit court and sittings.

III. *And be it further enacted,* That no indictment, information or cause whatsoever shall be tried before any

When fourteen days notice of trial is required.

Six days count-
ermand re-
quired.

judge or judges of any court of record within the state, where the defendant shall reside above forty miles from the place where the court is held in which such cause shall be tried, unless notice of trial in writing has been given at least fourteen days before such intended trial; and that in case any party shall have given such notice of trial as aforesaid and shall not afterwards duly countermand the same in writing at least six days before such intended trial, every such party shall be obliged to pay unto the party to whom such notice of trial shall have been given, the like costs and charges as if such notice of trial had not been countermanded.

Sheriffs to re-
turn jury and
other process
to such courts

IV. *And be it further enacted*, That the sheriffs and other officers to whom the return of any writs, juries or certificates shall appertain, shall cause the same to come before the said circuit courts or sittings as the case may require, to be held in their respective counties, together with the panels, attachments, re-attachments, summons, re-summons and all other minuments whatsoever any ways concerning the same, in all things according to law; *Provided always*, That the attachments, re-attachments, summons and re-summons thereof shall be made at least fifteen days before the holding of the said courts.

Proviso.

Issues con-
cerning mar-
riage and bast-
ardy to be tri-
ed by jury.

V. *And be it further enacted*, That all issues upon legality of marriage, and upon pleas or allegations of general or special bastardy, shall be tried by the country and not otherwise.

Bill of excep-
tions when &
how to be tak-
en.

VI. *And be it further enacted*, That when any one who is or shall be impleaded before any judges or justices, doth alledge an exception, praying that the justices allow it, and they will not allow it, if he who alledged the exception do write the same exception and require that the justices will put their seals to it for a witness, the justices shall do so; and if one will not another of the justices shall: And if a writ shall be brought to reverse the judgment in such case, and the same exception be not found in the roll, and the plaintiff shew the exception written with the seals of the justices put to it, the justice or justices who sealed the same shall be commanded to appear at a certain day, either to confess or deny his or their seal, and if the justices cannot deny the same, the court shall proceed to judgment according to the same exception as it ought to be allowed or disallowed.

Venire to be
awarded of
the body of
the county.

VII. *And be it further enacted*, That every *venire facias* for the trial of any issue in any action civil or criminal in any court of record within this state, shall be awarded of the body of the proper county where such issue is triable, except in cases where foreign juries shall be deemed necessary, in which cases the *venire facias* shall be awarded of the body of the county from which such foreign jury shall be directed to come.

VIII. *And be it further enacted*, That the attorney for the party to whom the *postea* on the return thereof ought in the first instance to be delivered, shall make up and return the same, and to that end the clerk forthwith after the trial or other proceedings shall have been finally had at the circuit court or sittings, shall deliver the record to the attorney of such party, and annex thereto a certified copy of the minutes of the court, containing such trial or other proceedings, and if there shall be a special verdict or demurrer to evidence, then he shall also deliver all such writings as may have been read in evidence on the trial, and which ought to be put on the record; *Provided nevertheless*, That where there shall be a special verdict, copies only of such original writings as may have been read in evidence on the part of the defendant shall be delivered to the attorney for the plaintiff.

Postea by whom & how to be made & returned.

Provido.

IX. *And be it further enacted*, That it shall not be lawful for more than thirty-six nor less than twenty-four jurors to be summoned for the trial of issues in the supreme court, or in any circuit court, sittings, court of oyer and terminer and gaol delivery, mayor's court, court of common pleas or general sessions of the peace to be held in any city or county of this state, unless otherwise directed by one of the judges of such court; and that all jurors who shall be returned upon trials of issues in the said courts, other than strangers upon trials *per medietatem lingue*, shall every of them be above the age of twenty-one and under the age of sixty years, and shall each of them have in such county in his own name or right, or in trust for him, or in his wife's right in the same county, a freehold in lands, messuages or tenements, or of rents in fee or for life of the value of one hundred and fifty dollars, free of all reprises, debts, demands or incumbrances whatsoever, and in the cities of New-York, Albany or Hudson a freehold of the value aforesaid, or a personal estate of the like value, free from all reprises, debts, demands or incumbrances whatsoever. And if any man not so qualified shall be returned upon any such jury, or tales in default of such jurors, it shall be good cause of challenge to the jury if not so qualified; and such person so returned shall be discharged upon such challenge, or his own allegation and oath thereof; and to the end that jurors so qualified may be always returned, the writs of *venire facias juratores* which shall at any time hereafter be awarded for the impanelling of juries within any of the counties of this state, except the county of New-York, shall have in the body thereof, the words following, that is to say: "*Twelve free and lawful men of your county, each of whom shall have in his own name or right, or in trust for him or in his wife's right, a freehold in lands, messuages or tenements, or of rents in fee or for life, of the value of one hundred and fifty dollars, free from all reprises, debts, demands or incumbrances*

Number of jurors to be summoned.

Qualifications of jurors.

Words to be inserted in the writs in all the counties except New-York.

Words to be
inserted in
the venire in
New-York.

whatsoever :" And in the city and county of New-York the words following, that is to say : "*Twelve free and lawful men of your city and county, each of whom shall have in his own name or right, or in trust for him or in his wife's right, a freehold in lands, messuages or tenements, or a personal estate of the value of one hundred and fifty dollars, free of all reprises, debts, demands or incumbrances whatsoever :*" And in the cities of Albany and Hudson for trials in the respective mayor's courts, the words following, that is to say : "*Twelve free and lawful men of your city, each of whom shall have in his own name or right, or in trust for him or in his wife's right, a freehold in lands, messuages or tenements, or a personal estate of the value of one hundred and fifty dollars, free of all reprises, debts, demands or incumbrances whatsoever.*" And the residue of the said respective writs shall be in the usual form.

Words to be
inserted in
the venire in
the mayor's
courts in Al-
bany & Hud-
son.

Notice of tri-
al to be given
to the clerk.

X. *And be it further enacted,* That at the same time that notice of trial shall be given to the opposite party, the like notice in writing together with a note of the issue shall be served on the clerk of the court in which such issue is to be tried.

Sheriff on re-
ceiving jury
process, ex-
cept from the
mayor's
courts of Al-
bany & Hud-
son, to repair
to the clerk,

XI. *And be it further enacted,* That whenever any process shall be issued for summoning a jury for any trial in any of the said courts to be held in any city or county of this state, the mayor's courts of the cities of Albany and Hudson excepted, the sheriff or other officer to whom such process shall be directed, shall immediately on receiving the same repair to the clerk of the same city or county, who shall thereupon in the presence of such sheriff or officer, or in the presence of one of the judges of the mayor's court or court of common pleas of such city or county, whose duty it shall be on being served with a request in writing to attend the clerk's office, proceed to draw out of the box by him provided for that purpose, and containing on slips of paper the names of the jurors of his city or county, with their places of abode and additions, as the same shall have been duly certified and transmitted to him, as many of the said slips of paper as there are jurors to be summoned upon such process, and the names contained on such slips of paper shall be the persons who are to be summoned to serve as jurors at the then next court, unless any of them shall be dead, or shall have changed their place of residence to any other city or county, or be absent from the city or county, or not qualified within the knowledge of such sheriff, officer, clerk or judge to serve as jurors ; and if the persons named on any of the said slips of paper so drawn shall be dead, removed or not qualified as aforesaid within the knowledge of such sheriff, officer, clerk or judge, then the said clerk shall immediately destroy such slips of paper and proceed to draw out of the said box until the panel shall be completed. And the said slips of paper containing the names of the

Who shall
draw the
names of the
jurors from a
box and certi-
fy a panel
thereof to the
sheriff.

jurors named in the said panel, shall by the said clerk be put together, and carefully be kept locked up in some safe place until after the end of the term or session of the court at which such jurors are to appear, and the clerk of the said court shall immediately make out and certify under his hand a panel of the names of such jurors so drawn out, with their respective places of abode and additions, and deliver the same to such sheriff or officer, whose duty it shall be to summon the several persons whose names are contained in such panel at least eight days previous to the sitting of any such court, and to make return in what manner he has served such process; and the clerk of such court shall as soon as may be after the end of the term or session of the court at which such jurors were to appear, put such of the slips of paper containing the names of the jurors who appeared at such court, and were not excused from serving or discharged, into another box to be by him provided and kept for that purpose, and such clerk shall destroy such slips of paper containing the names of any jurors as appeared at such court and were adjudged not to be qualified, or were privileged or exempted from serving on juries; and such clerk shall return to the box from which they were drawn such slips of paper containing the names of jurors who made default in appearing or were excused from serving. And the said clerk shall proceed in like manner to draw out of the said box until all the said slips of paper shall be drawn out of such first box, and after the slips of paper are all drawn out of the first box, the said clerk shall proceed in like manner to draw the names of the jurors out of the other box, returning the slips of paper containing the names of the jurors so drawn into the first box, and proceed in like manner as often as occasion shall require.

Sheriff to summon the persons named in such panel eight days before court.

Clerk after court to put the names of the jurors so drawn and who served into another box.

And so to take up and so to take up.

XII. *And be it further enacted*, That the clerk of the supreme court at the city of New-York, and the clerk of the circuit court and sittings and of the courts of oyer and terminer and gaol delivery within the said city of New-York, shall within one week after the end of each of the said courts within the said city, make and deliver to the town clerk of the said city, a list of all the jurors who shall have appeared in such courts of which they are respectively clerk; and also a list of all such as made default, and of such as were excused, and of such as were discharged by reason of their being privileged or not qualified; and the clerk of the supreme court at the city of Albany, shall in the like time and manner, make and deliver to the clerk of the county of Albany, a list of all the jurors who shall have appeared in the said supreme court or in the sittings in the said city of Albany, and a like list of all such as made default and were excused and discharged as aforesaid.

Clerk of the supreme court and of the circuit court, &c. in New-York to give to the town clerk of the said city within one week after each court, a list of the jurors who attended or made default.

Clerk of the supreme court at Albany to do the like.

How and by whom a list of

XIII. *And be it further enacted*, That the cities of Al-

jurors to be made at least once a year in each city and town in this state.

bany, Hudson and Schenectady shall be considered as towns for all the purposes intended by this act ; and the mayor, aldermen and commonalty of the city of New-York in common council convened, and the supervisors and assessors of the said cities of Albany, Hudson and Schenectady, and the supervisor, town clerk and assessors of the several towns shall from time to time, as occasion shall require, and at least once in every year, cause the names of each person residing in their respective cities and towns and qualified, and of sufficient ability and understanding to serve on juries in the several courts before mentioned, and not contained in either of the said boxes, with their places of abode and addition to be certified in writing, and transmitted to the clerk of the county, who shall thereupon cause such names with the places of abode and additions to be written on separate slips of paper and put into the box out of which the names of the jurors are next to be drawn as aforesaid ; and it is hereby made the duty of each of the town clerks in the several towns in the respective counties, to transmit a copy of the names of all such persons which are contained on the said slips of paper, as are dead, removed out of the county or not qualified to serve as jurors, to the clerk of the county at least once in every year, who shall thereupon destroy the several slips of paper containing such names.

Clerk of the county to put their names into the box.

Town clerks once at least in every year to send to the clerk of the county a list of such jurors as shall be dead, removed or not qualified.

Courts may award a *tales* for default of jurors.

XIV. *And be it further enacted*, That if a sufficient number of jurors do not appear at any of the courts mentioned in this act, or after appearance of a full jury by challenge the jury is like to remain untaken for default of jurors, such court is hereby authorized, upon motion made in behalf of the people of this state or of any party, to command the sheriff to name and appoint as often as shall be requisite, so many of such other persons of the said county qualified to serve on such juries according to the intent of this act, and to add and annex their names to the former panel as shall make up a full jury of twelve men for the trial of every such issue ; and the said courts shall proceed to the trial of every such issue with those jurors that were before impanelled and returned, and with those newly added and annexed to the said former panel by virtue of this act, in such wise as they might or ought to have done if all the said jurors had been returned upon the first panel.

Clerk's fees for drawing and impanelling the jury to be paid by the sheriff and to be allowed him in his account with the state. A like panel to be annexed to each writ.

XV. *And be it further enacted*, That the fees of the clerks of the respective counties for drawing every such jury and making the panel, shall be paid to them by the sheriff or other officer at whose request it shall be done, and the sheriff or other officer shall be allowed for the same in his account against the people of this state ; and that the sheriff or other officer to whom any writ or process shall be directed for the trial of issues in the said respective courts, except in cases of special juries,

shall annex a panel of the same jurors, with their places of abode and additions, to all the said writs or procefs returnable at the same court.

XVI. *And be it further enacted*, That it shall be the duty of every sheriff or other officer to furnish any person applying, with a copy of the panel of the jurors to serve on the trial of issues in any of the said courts.

Sheriff to furnish copy of the panel to any person applying.

XVII. *And be it further enacted*, That the names of all the persons contained in the panel annexed to the writ of *venire facias juratores*, need not be inserted in the writs of *habeas corpora juratorum* or *distringas* subsequent to such writ of *venire facias juratores*, but it shall be sufficient to insert in the mandatory parts of such writs of *habeas corpora juratorum*, "*The bodies of the several persons named in the panel to this writ annexed*;" and in the mandatory parts of such writs of *distringas*, "*The several persons named in the panel to this writ annexed*," or words of the like import, and to annex to such writs respectively panels containing the same names, places of abode and additions as were returned in the panels to such *venire facias juratores*.

Substance of the jury process affix *habeas corpora* & *distringas*.

XVIII. *And be it further enacted*, That every grand or petit juror, constable or other officer whose duty it shall be to attend any of the courts of record in this state, and who shall refuse or neglect to attend accordingly, shall be liable to be fined by such court in a sum not exceeding twenty-five dollars; and in every case where such fine shall be imposed by any of the said courts, such court shall immediately cause public proclamation of such fine to be made, and if such delinquent juror, constable or other officer who shall be fined as aforesaid, shall not during the term or sitting of the said court in which such fine shall be imposed, shew a satisfactory reason or excuse to the said court for his default or non-attendance, then such fine so imposed shall be estreated into the court of exchequer, in order that the same may be levied and paid into the treasury for the use of the people of this state.

Fine on jurors for non-attendance:

XIX. *And be it further enacted*, That in all cases where the sheriff or other officer shall not be able to summon personally any person directed to be summoned as a juror, by reason of absence from home, a summons in writing left at the usual place of abode of such person within the time prescribed for that purpose, with some person of suitable age and discretion, shall be deemed a sufficient notification; and that in all cases of a summons of a juror in writing as aforesaid, the court shall suspend the imposing a fine for his non-attendance until the next term or sessions of such court, to the end that such juror may have time to make it appear to such court that he was absent from home at the time such summons was left at his place of abode, and did not return in season to attend

How collected

Jurors may be summoned by notice in writing.

Fines in such case for default not to be imposed until the juror in default be notified to make his excuse:

Sheriff to give
such notice.

How jurors
are to be cho-
sen on trials.

at the said court; and to the end that such defaulting jurors may have such notice the clerks of the several counties shall forthwith transmit to the sheriff of the county, a list of the names of such defaulting jurors, who shall without delay notify such jurors of their respective defaults and liability to a fine on that account.

XX. *And be it further enacted,* That upon all trials in any of the courts aforesaid, except by struck juries or where views shall have been had, the name of every person who shall be summoned and impanelled as a juror upon such trial, with his place of abode and addition shall be written on several and distinct pieces of paper or parchment, being all as near as may be of equal size, and shall be delivered unto the clerk of the court in which such trial is to be had, by the sheriff or other officer who shall have returned such jury, or his deputy or agent, and shall by direction and care of such clerk be rolled up all as near as may be in one and the same manner, and put together into a box to be by each respective sheriff provided for that purpose; and when any issue for the trial whereof they are returned as jurors shall be brought on to be tried, the clerk of the court or some other indifferent person by direction of the court, shall in open court draw out twelve of the said papers or parchments one after another, and if any person whose name shall be so drawn shall not appear or be challenged and set aside, then such further number thereof shall be drawn as shall make up the number twelve, who do appear after all causes of challenge allowed, as fair and indifferent, and the said twelve men so first drawn and appearing and approved as indifferent, shall be sworn and be the jury to try such cause or issue, and their names shall be marked in the panel, and the names of the men so drawn and sworn shall be kept apart by themselves in some other box to be provided as aforesaid, and kept for that purpose until such jury shall have given in their verdict and the same is recorded, or until such jury shall by consent of the parties or leave of the court be discharged, and then the said names shall be rolled up again and returned to the former box there to be kept with the other names remaining at that time undrawn, and so it shall be done as often as any issue remains to be tried: But the names of such as shall at any time be drawn and shall not appear, or be challenged and set aside, shall immediately after the jury in such case be sworn, be rolled up again and returned to the same box with the names at that time undrawn; and if any issue shall be brought on to be tried in any of the said courts, before the jury in any other cause shall have brought in their verdict or be discharged, it shall be lawful for the court to order a jury to be drawn in manner aforesaid out of the names

then remaining in the said first mentioned box, for the trial of such issue which shall be so brought on to be tried.

XXI. *And be it further enacted*, That in any action in the supreme court, or in any of the courts of common pleas or mayor's courts in either of the cities or counties of this state, where it shall appear to the court in which such action may be depending, that it will be proper and necessary that the jurors who are to try the issues in any such actions should have a view of the messuages, lands or place in question, in order to their better understanding the evidence that will be given upon the trials of such issues, in every such case the said respective courts in which such actions shall be depending, may order special writs of *distringas* or *habeas corpora juratorum* to issue, by which the sheriff or other officer to whom the said writ shall be directed, shall be commanded to have six out of the first twelve of the jurors named in the panel annexed to such writ, or some greater number of them, at the place in question, some convenient time before the trial, who then and there shall have the matters in question shewn to them by two persons in the said writs named, to be appointed by the court; and the sheriff or other officer who is to execute the said writs, shall by a special return upon the same certify that the view was had according to the command of the said writs; and in such case if there is not a struck jury, and the parties or their agents or attornies shall not mutually agree by writing under their hands on the jurors who are to have the view, the names of all the jurors returned for the trial of such cause with their places of abode and additions, shall be written on several and distinct pieces of paper or parchment and rolled up and put into a box as aforesaid, in the presence and by the direction of one of the judges of the court in which such cause shall be depending, and then the names of so many of them as shall be necessary to go upon the view, but not less than six, shall be drawn out in the presence of such judge, and the names of the jurors so mutually agreed upon or balloted as aforesaid, with their places of abode and additions, shall be first written on the panel to be annexed to such writs of *habeas corpora juratorum* or *distringas*, and the names of the residue of the jurors returned for the trial of such cause, with their places of abode and additions, shall be written on such panel immediately following the names of the jurors so agreed upon or balloted for the view, in the same order they may stand in the panel annexed to the *venire facias*; and when such cause is brought on to be tried and in all other cases where a view shall be had by virtue of any writ original or judicial, such of the jurors as shall have had the view and do appear, shall be first sworn upon the jury to try the same before any drawing,

A view when to be granted.

Special writs to issue.

Mode of appointing the jurors who are to have the view

Jurors on the view to be first sworn at the trial.

and then so many more shall be drawn as aforesaid to be added to the viewers who appear, as shall after all defaults and challenges allowed make up the number twelve.

Court to order
a struck jury
when it shall
be deemed
necessary.

Mode of striking
such jury.

XXII. *And be it further enacted*, That no struck jury shall be allowed unless on the order of the court, when they may deem it necessary by reason of the importance or intricacy of the case; and whenever they shall so deem it necessary, it shall be lawful for the supreme court or the court of common pleas or mayor's court in which the cause is depending, to order the clerk of the county to return into the office of the clerk of the said court, or if the clerk of the county be the clerk of the said court, then to have ready in his office at a certain day, a book containing the names of the several persons in his county qualified to serve as jurors on such trial, with their places of abode and additions, and after the return of such book the party applying for such struck jury shall give due notice to the opposite party, and to the clerk of the said court or his deputy, of the time and place of striking such jury, at which time and place the clerk of the said court or his deputy shall attend with the said book, and shall in the presence of the parties, or such of them as shall attend for that purpose, copy out of the said book the names of forty-eight such persons with their places of abode and additions, as he shall think most indifferent between the parties and best qualified to try such cause; and then the party applying for such struck jury or his agent or attorney, shall first strike out one of the said names, and then the opposite party or his agent or attorney another, and so alternately until each shall have struck out twelve; but if such opposite party shall not attend such striking, nor any person in his behalf, then the said clerk or his deputy shall strike for the party not attending, and when each have struck out twelve as aforesaid, the remaining twenty-four shall be the jury to be returned to try the said cause; and the clerk of the said court or his deputy shall thereupon make a fair copy of the names of the said remaining twenty-four persons, with their places of abode and additions, and certify the same under his hand to be the list of jurors struck as aforesaid for the trial of such cause or issue; which list shall be delivered to the sheriff or other officer who ought to summon such jury, together with the *venire facias*; and such sheriff or other officer shall thereupon annex the same list to such *venires*, and return the same as the panel of the jury to try such cause, and summon them according to the command of the same writ; and upon the trial of such cause there shall be no balloting, but the jurors so struck shall be called as they stand upon the panel, and the first twelve of them who shall appear and are not challenged, or shall be found duly qualified and indifferent, shall be the jury and

be sworn to try the said cause; but the party who shall apply for such struck jury shall pay the fees for striking thereof, and shall not have any allowance for the same upon the taxation of costs; *Provided always*, That if the clerk of such court shall be interested in the cause or related to either of the parties, or if it shall appear probable to the court that he is not indifferent between them, then and in every such case the court shall nominate two proper persons who are indifferent between the parties to strike the jury, which persons shall do and perform every thing required to be done by such clerk relating to the striking of such jury.

Fees of striking the jury to be paid by the party applying.

If the clerk be not indifferent, the court to nominate two proper persons to strike the jury

XXIII. *And be it further enacted*, That struck jurors shall be paid by the party at whose request such jury shall be struck or his attorney, and it shall be lawful for every such juror to bring and maintain his suit for the recovery thereof, either against such party or his attorney in the cause.

Fees of struck jurors by whom paid and how recovered.

XXIV. *And be it further enacted*, That all manner of juries and inquests hereafter to be taken between aliens and citizens of any of the United States of America, in any of the said courts, and whether this state be party, or interested or not, except in cases of treason, the one half of the jury or inquest shall be citizens of this state and qualified by this act to serve on such juries or inquests, and the other half aliens, if so many aliens be in the city or county where such jury or inquest is to be taken, and who shall be indifferent between the parties, and if there be not so many aliens or strangers, then there shall be put on such juries or inquests as many aliens and strangers as shall be found in the same city or county who shall be indifferent as aforesaid, and the remainder of citizens of this state qualified by this act to serve on such juries or inquests.

In what cases one half of the jurors to be aliens.

XXV. *And be it further enacted*, That in all cases where the attorney general in behalf of this state, or he who shall in any case prosecute for the people of this state, shall challenge any juror as not indifferent or for any other cause, he shall immediately assign and shew the cause of such challenge, and the truth thereof shall be inquired of and tried in the same manner as the challenges of other parties ought by law to be inquired of and tried; *Provided*, That nothing in this act contained shall be construed to take away the right of peremptory challenges in any cases where the same are now allowed by law.

Challenges on behalf of the state how tried.

Provide,

XXVI. *And be it further enacted*, That if any of the jurors sworn for the trial of any issues or other inquests to be taken between the people of the state of New-York and any party, or between party and party, shall take any thing to give their verdict and thereof be found guilty in any court of record, either at the suit of any party or

Juror taking any thing to give his verdict to forfeit ten times as much.

Embraceors
punished in
the same
manner.

any other person that will sue for himself or for himself and the people of the state of New-York, every of the said jurors shall pay ten times as much as he hath taken with the costs of suit, and he that will sue shall have the one half and the people of the state of New-York the other half; and that all embraceors that procure such jurors and inquests to take gain or profit, shall be punished in the same manner and form as the jurors; and if the party to the plea shall bring any such suit or action and shall recover therein, he shall also recover his damages by the assessment of the inquest; and if the juror or embraceor so found guilty shall not have whereof to make satisfaction in the manner aforesaid, he shall be imprisoned for one year.

Jurors not
compelled to
give a general
verdict.

XXVII. *And be it further enacted*, That no jury upon any trial hereafter to be had shall in any case be compelled to give a general verdict so that they find a special verdict and shew the truth of the fact, and require the aid of the court or justices.

Persons ex-
empted from
being jurors.

XXVIII. *And be it further enacted*, That any non-commissioned officer or private of any company of grenadiers, light infantry, artillery and riflemen of the militia of this state, and the commissioned officers of artillery in the city of New-York, who shall produce a certificate dated within three months of the then present time, signed by the commanding officer of such company or regiment that he belongs to such company, shall not be compelled to serve on any grand or petit jury within this state; nor shall the firemen belonging to any company of firemen now or hereafter to be established by law in any city, town or village within this state; or the inspectors of the state prison, or the wardens of the port of New-York, or the commissioners of the health-office, be compelled to serve on any grand or petit jury, so long as they continue to be firemen, inspectors, wardens or commissioners as aforesaid; and also the agents, superintendants, artificers and workmen of every kind employed in and about the Albany glass factory, belonging to the Hamilton glass manufacturing society, shall be exempted from serving as jurors during the time they shall be so employed; *And further*, That no Quaker or reputed Quaker shall be compelled to serve as a juror upon the trial of any indictment for treason or murder.

C H A P. CII.

An ACT relative to Special Bail in the Supreme Court.

Passed 31st March, 1801.

I. **B**E it enacted by the People of the State of New-York, represented in Senate and Assembly, That the several judges of the courts of common pleas within this state, are hereby authorized in their respective cities and counties where they are commissioned, to take every such recognizance of bail as any person may be desirous to make before them, in any action in the supreme court or court of exchequer, and in such manner and form and by such recognizance or bail-piece as the judges of the supreme court usually take the same; and every recognizance or bail-piece taken by a judge of the supreme court, shall be by the party making the same or by some one on his behalf, filed in the office of one of the clerks of the supreme court within fourteen days after taking the same; and the said judges of the courts of common pleas shall examine the sureties to any such recognizance of bail or bail-piece when thereunto required by any person interested in or affected by such bail, concerning the value of such sureties' estate and personal circumstances, and the plaintiff shall have the like time for excepting against the sureties to be given in manner aforesaid as is allowed when such recognizance or bail is taken before one of the judges of the supreme court.

Judges of the courts of common pleas may take bail in actions in supreme court.

The party to transmit the bail piece to the clerk in fourteen days.

Judges of the common pleas to examine the bail.

II. *And be it further enacted,* That it shall be lawful for the defendant in any action in the supreme court to surrender himself, or for his bail or manucaptor to surrender him before a judge of the court of common pleas for the county where the defendant shall or may be found; and the judge before whom the surrender shall be made, shall thereupon by a *committitur* to be indorsed on a copy of the bail-piece, commit the defendant to the gaol of the county accordingly; and the sheriff shall also indorse on the said copy of the bail-piece a receipt, purporting that the defendant hath been delivered to and received by him by virtue of such *committitur*, and which copy of the bail-piece, the receipt of the sheriff thereon being first acknowledged by him, or proved by a subscribing witness thereto before the judge who shall so commit the defendant, or before a judge of the supreme court or a commissioner for taking affidavits to be read in the said court, being filed in the office of one of the clerks of the said court, a judge of the said supreme court may thereupon make an order for the attorney of the plaintiff to appear and shew cause why an *exoneretur* should not be indorsed on the original bail-piece, and further proceed therein as if the surrender had been made before a judge of the said supreme court.

Surrender of bail in supreme court how to be made before a judge of the common pleas

Special bail
allowed in ac-
tions of tref-
pass upon
land.

III. *And be it further enacted*, That in all actions of trespass upon land, the plaintiff shall be entitled to special bail, and an *actiam* or proper clause for that purpose may be inserted in the first process; and the plaintiffs shall have all the advantages thereon, and upon the bail bond to be taken on the arrest as in other actions where the defendant is held to bail, and both parties shall be subject to such discretionary rules and orders of court respecting such suits in trespass and on the bail bonds as are used in other cases.

When the
plaintiff may
file common
bail for de-
fendant.

IV. *And be it further enacted*, That in cases where special bail may be required, if the defendant shall not cause the same to be given within double the time required for that purpose by the rules of the court in which the cause may be depending, it shall be lawful for the plaintiff to file common bail for the defendant and proceed to judgment in like manner as if special bail had been put in.

C H A P. CV.

An ACT concerning Judgments and Executions.

Passed 31st March, 1801.

Real estate
liable to be
sold on execu-
tion.

I. **B**E it enacted by the People of the State of New-York, represented in Senate and Assembly, That all and singular the lands, tenements and real estate of every debtor shall be liable to be sold upon execution to be issued for that purpose by the rules of the court in which the cause may be depending, it shall be lawful for the plaintiff to file common bail for the defendant and proceed to judgment in like manner as if special bail had been put in.

Time of sign-
ing judgment
to be noted
on the mar-
gin of the re-
cord.

II. *And be it further enacted*, That every judge or officer of any court of record who shall sign any judgment, shall at the time of signing the same, without any fee, set down the day and year of his signing the same judgment, upon the margin of the roll or record where the same judgment shall be entered; and that the clerks of the said respective courts shall mark upon the back of every roll or judgment filed in their respective offices, the time of filing the same; *And further*, That no judgment shall affect any lands or tenements as to purchasers or mortgagees, or have any preference against heirs, executors or administrators in their administration of their ancestors, testators or intestates estates, but from the time of the actual filing of the roll or record of the same judgment in their respective offices, after the same shall have been signed as aforesaid.

Clerk to note
on the back
of every roll
the time of
filing it.

Judgment not
to affect land
in certain ca-
ses but from
the filing of
the roll.

Clerks to
docket all
judgments.

III. *And be it further enacted*, That the clerks of the several courts of record in this state shall during every term or court, or within six days thereafter, make and put into an alphabetical docket, by the name of the party

against whom any judgment shall be entered, a particular entry of all final judgments for debt or damages entered in the said courts respectively of such term, or at the court preceding, which shall contain the names of the parties, their places of abode and title, trade or profession, if any such be in the record of such judgment, and the debt, damages and costs recovered thereby; and the said respective dockets shall be fairly put into and kept in books in the office of said clerks respectively, which may be searched by all persons at reasonable times, and every clerk for every term or court in which he shall omit to do his duty in the premises, shall forfeit the sum of two hundred and fifty dollars, the one moiety thereof to the party grieved, and the other moiety to the person who will sue for the same, to be recovered with costs of suit in any court of record by action of debt or by information; *And further*, That no judgment not docketed and entered in the books as aforesaid, shall affect any lands or tenements as to purchasers or mortgagees, or have any perference against heirs, executors or administrators in their administration of their ancestors, testators or intestates estates.

Judgments not docketed not to affect purchasers.

IV. *And be it further enacted*, That no recognizance hereafter taken shall bind any lands, tenements or hereditaments in the hands of any purchaser or mortgagee *bona fide*, and for valuable consideration.

Recognizances not to bind lands against purchasers.

V. *And be it further enacted*, That the clerks of the supreme court shall respectively deliver each to the other, on or before the last day of every term, at the place where the supreme court shall then be held, a transcript of the docket of all judgments that shall have been docketed in his office as aforesaid during the preceding term and vacation, and before the first day of the term in which such transcript shall be delivered, which transcript shall be certified by the clerk in whose office it shall be made, to be a true copy of the original docket in his office, and shall be entered in a book in the office of the clerk receiving the same, as part of the docket of judgments, and which book shall be provided for that purpose by each of the said clerks in his office.

Clerks of the supreme court to interchange with each other, every term, a transcript of the docket of judgments.

VI. *And be it further enacted*, That no judgment shall be entered upon any bond or other contract in writing hereafter to be made, upon the confession of any attorney by virtue of any authority whatsoever contained in the same instrument, paper or parchment with such bond or contract; and no judgment shall be entered upon any confession taken out of court before any judge of any court of common pleas or mayor's court, and if any judgment shall be so entered the same shall be void.

Judgments by confession upon judgment bonds restricted.

VII. *And be it further enacted*, That no writ of execution shall bind the property of the goods of any person against whom such writ shall be issued, but from the time

Execution to bind goods from delivery to sheriff.

Sheriff to in-
dorse the
time of deliv-
ery.

that such writ shall be delivered to the sheriff, under-sheriff, coroner or other officer to be executed ; and for the better manifestation of the said time, the sheriff, under-sheriff, coroners and other officers, their deputies and agents, shall upon the receipt of every such writ, without fee for doing the same, indorse upon the back thereof the day of the month and year when he or they received the same.

Execution
may issue
against the
body or estate
of the debtor.

VIII. *And be it further enacted,* That where any debt shall be recovered or acknowledged, or damages adjudged in any court of record, it shall be lawful for the party in whose favor such judgment shall be given, to have an execution against the body of such debtor, or a writ commanding the sheriff or other proper officer to cause such debt and damages to be made of the goods and chattels of the party chargeable with such debt in the usual form, or of the goods and chattels, lands and tenements of the person chargeable with such debt, in the form herein after mentioned ; but no execution shall be issued against the body, or the proper goods and chattels, lands and tenements of any heir, devisee, executor or administrator, unless such person shall have made his estate liable to the same debt by false pleading or otherwise.

Exception as
to heirs, ex-
ecutors, &c.

Form of exe-
cution against
the estate :

IX. *And be it further enacted,* That in every writ of execution hereafter to be issued against lands and tenements, the sheriff or other officer to whom such writ shall be directed, shall be commanded that of the goods and chattels of the person or persons against whom such execution shall issue in his county, he cause to be made the debt, damages and costs or sum of money in such execution specified ; and if sufficient goods and chattels of such person or persons cannot be found in his county, that then he cause the said debt, damages and costs or sum of money to be made of the lands and tenements whereof such person or persons was or were seized on the day when the same lands became liable to such debt, damages or sum of money, specifying the day particularly, or at any time afterwards, in whose hands soever the same may then be ; but when any such execution shall be issued against any person or persons as ter-tenants, or as heirs or devisees of any person deceased, unless they shall have made their estate liable by false pleading or otherwise, such writ shall only command the sheriff or other officer to whom the same shall be directed, that of the lands and tenements whereof the ancestor, testator or person deceased was seized on the day the same lands became liable as aforesaid, or at any time afterwards, or at the time of his or her death, as the case may require, he cause to be made the debt, damages and costs or sum of money in the same writ specified.

Form thereof
against ter-
tenants, heirs
and devisees.

Remedy
where several
are bound by

X. *And be it further enacted,* That where lands or tenements in the hands of several persons shall be liable

to satisfy any judgment or debt of record, and the whole or more than a due proportion shall be paid by or levied upon the lands of any one or more of them, the person or persons so aggrieved, his or their executors or administrators, may have a writ out of chancery setting forth his or their grievance, directed to the justices of the supreme court, commanding them to hear the complaint and to do justice to the parties ; and the justices of the supreme court shall thereupon cause the party or parties against whom such complaint shall be made, to be warned to be before them at a certain day, to shew if he or they have any thing to say why his or their lands should not be charged with a due proportion of the monies so paid or levied ; and if he or they do not come at the day, or do come and can say nothing why his or their lands should not be charged with a due proportion of the monies so paid or levied, then the sheriff of each county in which such lands and tenements so chargeable shall be situated, shall be commanded that by the oath of twelve good and lawful men of his county, he diligently inquire what was the true value of the lands and tenements in the hands of each of the parties respectively in his county so chargeable at the time they became chargeable as aforesaid, and that he send the inquisition which he shall take thereof before the same justices at a certain day, under his seal and the seals of those by whose oath he shall take such inquisition ; and when the value of the whole lands and tenements so chargeable shall be found, the justices shall apportion the money so paid or levied, together with the plaintiff's damages and costs of suit, among the several holders of the said lands and tenements so chargeable, according to equity and justice ; and shall cause so much as each person ought to pay to be levied of the said lands and tenements so held by him or her and to be paid to the plaintiff ; *And further*, If any purchaser of any lands or tenements upon any execution, or his heirs or assigns shall be evicted on account of any irregularity in the proceedings, or want of title in the person or persons against whom such execution issued, or by reason of any prior incumbrance, in every such case the person or persons so evicted, his or their executors or administrators, may have a writ out of the chancery setting forth his or their grievance, directed to the justices of the supreme court, commanding them to hear the complaint and to do justice to the parties ; and the justices of the supreme court shall thereupon cause as well the party or parties at whose suit or for whose benefit the same lands and tenements were sold, as the party against whom the execution issued, or their respective heirs, devisees, executors or administrators, to be warned to be before them at a certain day, to shew if they or either of

judgment, &
one pays more
than his
share.

Remedy
where pur-
chaser upon
execution is
evicted.

them have any thing to say why the plaintiff should not be restored to the monies paid for the said lands and tenements ; and if they do not come at the day, or do come and say nothing why the plaintiff should not have restitution of the said monies, the plaintiff shall have judgment and execution for the same together with his costs of suit, against him or them who ought to repay the same ; and the party in whose favor such former judgment was had or his heirs, devisees, executors or administrators who may be charged by such judgment of restitution, shall thereupon have such further judgment and execution as justice shall require.

If debtor die in execution, plaintiff may have new execution against his estate.

Such execution not to affect any estate bona fide sold for payment of debts

XI. *And be it further enacted*, That the party at whose suit any person shall stand charged in execution for any debt or damages recovered, his executors or administrators may, after the death of the said person so charged and dying in execution, have new execution against the goods and chattels, lands and tenements, or any of them, of the person so deceased, in the same manner as such party might have had if the person so deceased had never been charged in execution ; but no such new execution shall be against any lands, tenements or hereditaments which shall at any time after the judgment against such person so dying, and by reason whereof such person so dying was charged in execution, have been sold *bona fide* by such person for the payment of any of his creditors, and the money which shall be paid for the lands so sold, either paid or secured to be paid to any of his creditors with their privity and consent, in discharge of his debts or of some part thereof, nor against any lands, tenements or hereditaments of any such person so dying in execution which shall have been sold by reason of any other judgment against such person.

Sales of land by execution to be at public vendue on six weeks notice.

XII. *And be it further enacted*, That no lands or tenements shall be sold by virtue of any execution aforesaid, unless such sale be at public vendue, and between the hours of nine in the morning and the setting of the sun of the same day, nor unless the time and place of holding such sale shall have been previously advertised publicly for the space of six weeks successively, by nailing up a printed or written notice thereof in at least three of the most public places within the town where such lands or tenements shall be sold, and also by causing a similar notice thereof to be printed in one of the public newspapers, if any such paper there be, within the county wherein such lands and tenements shall be sold ; and if any sheriff shall sell any lands or tenements by virtue of any such execution, otherwise than in the manner aforesaid, or without such previous notice, or if any person shall take down or deface any such notice previous to the day of sale therein specified, unless upon satisfaction of the judgment on

Penalty against persons who sell contrary thereto, or take down or deface the notice.

which such execution issued or with the consent of the plaintiff therein, the sheriff so offending shall for every such offence forfeit and pay the sum of one thousand two hundred and fifty dollars ; and every person so offending by taking down or defacing such notice shall forfeit and pay the sum of thirty-seven dollars and fifty cents, to be respectively recovered with costs of suit by any person who will sue for the same ; which sum or sums when recovered shall be for the use of the person so prosecuting for the same ; *Provided however*, That no such offence shall be deemed to affect the validity of any such sale.

Provida.

XIII. *And be it further enacted*, That it shall not be lawful for any sheriff or other officer to whom any such execution shall be directed, or any of their deputies or any person for them or either of them, to purchase any goods or chattels, lands or tenements at any sale by virtue of any execution, and all purchases so made by them or any of them, or for the use of them or any of them, shall be void.

Sheriffs and their officers prohibited from purchasing at such sales.

C H A P. CX.

An ACT concerning the Mayor's Courts of the several Cities, and the Courts of Common Pleas and General Sessions of the Peace in the several Counties of this State.

Passed 2d April, 1801.

I. **B**E it enacted by the People of the State of New-York, represented in Senate and Assembly, That the mayor, recorder and aldermen of the city of New-York, and the mayor, recorder and aldermen of the city of Albany, or the mayor and recorder of the said respective cities jointly, or either of them singly, with or without the presence of any of the aldermen of the said respective cities, shall have power to hold the courts of common pleas called the mayor's courts of the said cities respectively, any law, charter or usage to the contrary notwithstanding ; *Provided*, That nothing herein contained shall be construed to preclude any of the aldermen of the said cities respectively from sitting as judges of the said respective courts ; and in case of the sickness, death or absence of the mayor and recorder of the said city of Albany, it shall be lawful for any three of the aldermen of said city to hold the said mayor's court of the city of Albany.

Mayor's courts in N. York and Albany by whom to be held.

Provida.

II. *And be it further enacted*, That the said mayor's court of the city of Albany shall be held on the first Tuesday of every month, and that the terms thereof shall be and hereby are extended to three days inclusive, and the terms of the said mayor's court of the city of New-York to five days inclusive.

Terms of the said courts when & how long to be held.

Records and
process in the
mayor's
courts of N.
York, Albany
and Hudson
how to be ex-
pressed.

III. *And be it further enacted*, That in the records, process and proceedings of the mayor's courts of the cities of New-York, Albany and Hudson, "*Judges of the said court*" shall be inserted, instead of the "*Mayor, recorder and aldermen of the said cities*"; and all writs and process issuing out of or returnable into the same courts, shall be made returnable before the judges of the same courts respectively, and all writs directed to the same courts shall be directed to the judges of the court of common pleas called the mayor's court, in and for the city of New-York, or the city of Albany, or the city of Hudson, as the case may be.

General and
special sessions
of the peace
in New-York
by whom to
be held.

Terms of the
general ses-
sions when &
how long to
be held.

Special ses-
sions when &
how long to
be held.

Powers of the
special ses-
sions.

The said
courts may be
held at the
same time
with the su-
preme court
or court of
oyer and ter-
miner.

Mayor's
court in Hud-
son by whom
to be held.

IV. *And be it further enacted*, That the mayor, recorder and aldermen of the said city of New-York, or any three of them, of whom the mayor or recorder always shall be one, shall have power to hold courts of general or special sessions of the peace in the said city and county; *And further*, That such courts of general sessions shall be held on the first Tuesdays in June, August, October, December, February and April in every year, and at no other times, and may continue and be held every day, Sunday excepted, until the several Tuesdays next following inclusive; and such courts of special sessions may be held at any times that the said mayor, aldermen and commonalty in common council convened shall direct, and may continue to sit as many days, Sundays excepted, as the said court shall think proper for the dispatch of business, and either with or without a grand jury as the said mayor, aldermen and commonalty convened as aforesaid shall direct, and shall possess the same powers and jurisdiction in every respect as the said courts of general sessions of the peace; and if the supreme court of judicature of this state, or any court of oyer and terminer or gaol delivery shall at any time be held in the said city during the continuance of the said courts of sessions or any of them, it shall nevertheless be lawful for the said courts of sessions, by the oath of good and lawful men, to inquire of, hear and determine all felonies and offences committed in the said city and county, in the same manner as if the said supreme court, or court of oyer and terminer or of gaol delivery were not then held in the said city and county.

V. *And be it further enacted*, That the mayor, recorder and aldermen of the city of Hudson or any three of them, of whom the mayor or recorder shall always be one, shall have power to hold a court of common pleas within the said city, to be called the mayor's court of the said city, on the first Tuesday of every month, and that each of the terms of the said court may continue to be held two days inclusive, and in case of the death, sickness or absence of the mayor and recorder of the said city of Hudson, it

shall be lawful for any three of the aldermen of the said city, to hold the said court therein.

VI. *And be it further enacted*, That the judges and assistant justices of each of the other counties of this state or any three of them, of whom one of the judges of the court of common pleas shall always be one, shall have power to hold such courts of common pleas in their respective counties ; *And further*, That the justices of the peace of each of the said counties or any three or more of them, of whom a judge of the court of common pleas shall always be one, shall have power to hold the courts of general sessions of the peace in the said counties respectively.

Courts of common pleas and general sessions in each county by whom to be held :

VII. *And be it further enacted*, That the seals of the said courts of common pleas and mayor's courts already devised and made, shall continue to be the seals of the said courts respectively.

Seals of the said courts.

VIII. *And be it further enacted*, That the mayor's courts of the said cities of Albany and Hudson shall be and hereby are authorized and impowered to hear, try and determine according to law all actions real, personal and mixed arising within the said cities or within the jurisdiction of the said courts respectively and not elsewhere ; and that the mayor's court of the said city of New-York and the courts of common pleas of the several counties of this state, shall be and hereby are authorized and impowered in like manner to hear, try and determine according to law all actions real, personal and mixed arising within the said city and counties respectively, and also all transitory actions, although the same may not have arisen within the said city and counties respectively ; and the said courts respectively are hereby impowered to grant new trials in all cases where they shall find it necessary or proper ; *Provided*, That no new trial shall be granted otherwise than for irregularity, unless one of the judges present and concurring shall be of the degree of counsellor at law in the supreme court of this state.

Jurisdiction of the mayors' courts of Albany and Hudson.

And of the mayor's court of New-York and the courts of common pleas of the several counties.

Power to grant new trials.

Provide.

Times and places of holding the said courts in the several counties :
in Albany ;

Suffolk ;

Queens ;

Kings ;

Richmond ;

IX. *And be it further enacted*, That the courts of common pleas and general sessions of the peace in the several counties of this state, shall be held in every year at the times and places following, to wit : In the county of Albany at the city-hall of the city of Albany, on the third Tuesday of February, the fourth Tuesday of May and the first Tuesday of October ; in the county of Suffolk at the court house in the same county, on the last Tuesday of March and the first Tuesday of October ; in the county of Queens at the court house in said county, on the first Tuesday of June and the second Tuesday of November ; in the county of Kings at the court house in said county, on the third Tuesdays of April and October ; in the county of Richmond at the court house in said county, on

the first Monday of May, and the second Tuesday of September ; in the county of Westchester as follows, that is to say, the said courts of common pleas shall be held on the fourth Mondays of May and September and third Monday of December in every year, and shall be held alternately at the court house at Bedford and at the court house at the White Plains, but no issue of fact shall be tried by a jury in any of the said terms of December ; and that the courts of general sessions of the peace in and for the said county of Westchester shall be held on the fourth Mondays of May and September in every year, at the place where the court of common pleas shall be then held ; in the county of Rockland at the court house of said county, on the first Tuesdays of May and November ; in the county of Orange, alternately at the court house in Gothen and the academy in the village of Newburgh in said county, the court of common pleas on the third Tuesday of February, the last Tuesday of May and the first Tuesdays of September and December, and the general sessions of the peace on the first Tuesdays of September and December ; in the county of Ulster at the court house in said county, the court of common pleas on the first Tuesdays of January, May and July and the third Tuesday of September, and the court of general sessions of the peace on the said first Tuesday of May and third Tuesday of September ; in the county of Dutchess at the court house in said county, the court of common pleas on the second Tuesdays of January and October and the last Tuesdays of March and June, and the court of general sessions of the peace on the said last Tuesday of March and second Tuesday of October ; in the county of Columbia at the court house in said county, on the second Mondays of January, May and September ; in the county of Rensselaer at the court house in said county, the court of common pleas on the third Mondays of February and May and the first Monday of October, and the general sessions of the peace on the said third Monday of February and first Monday of October ; in the county of Washington at the court house in said county, on the last Tuesday of May and the first Tuesday of November, and at the dwelling house of Daniel Cook in the town of Kingbury in said county, on the second Tuesday of February ; in the county of Essex at the blockhouse in the town of Willsborough in said county, the court of common pleas on the second Tuesdays of January and May and the last Tuesday of September, and the general sessions of the peace on the said second Tuesday of May and last Tuesday of September ; in the county of Clinton at the court house in said county, the court of common pleas on the third Tuesday of January and the first Tuesdays of May and October, and the general sessions of the peace

on the said first Tuesdays of May and October; in the county of Greene at the academy in the town of Catskill, the court of common pleas on the first Tuesday of January, the first Tuesday of May and the third Tuesday of September, and the court of general sessions of the peace on the first Tuesday of May and third Tuesday of September; in the county of Saratoga at the court house in said county, on the second Tuesday of January, the second Tuesday of April and the last Tuesday of September; in the county of Montgomery at the court house in said county, the court of common pleas on the second Tuesdays of February, June and October, and the court of general sessions of the peace on the said second Tuesdays of February and October; in the county of Schoharie at the court house in said county, the court of common pleas on the first Tuesdays of January and October and the third Tuesday of May, and the court of general sessions of the peace on the said first Tuesday of January and third Tuesday of May; in the county of Herkimer at the court house in said county, the court of common pleas and general sessions of the peace on the third Tuesday of January, the fourth Tuesday of May and the first Tuesday of October; in the county of Otsego at the court house in said county, the court of common pleas on the second Tuesday of January, the fourth Tuesday of June and the third Tuesday of October, and the general sessions of the peace on the said second Tuesday of January and fourth Tuesday of June; in the county of Oneida at the school house near Fort Stanwix in the town of Rome in said county, on the third Tuesday of May, the first Tuesday of September and the last Tuesday of December; in the county of Chenango, alternately at the school house in the town of Hamilton near the dwelling house of Elisha Payne, and at the academy in the town of Oxford in said county, on the third Tuesday of February, the second Tuesday of October and the first Tuesday of July; in the county of Delaware at the court house in the town of Delhi in said county, the court of common pleas on the second Tuesday of February and the first Tuesdays of June and October, and the court of general sessions of the peace on the said second Tuesday of February and first Tuesday of October; in the county of Onondaga at the house of Samuel Tyler in the town of Onondaga in said county, on the fourth Tuesdays of January, May and September; in the county of Tioga, alternately at the house of Joshua Whitney at Chenango in the town of Union, and at the court house at Newtown Point in the town of Newtown, on the first Tuesdays of February, May and October; in the county of Cayuga at the Cayuga ferry in the village of Cayuga and town of Aurelius, on the third Tuesdays of January, May and Sep-

Greene;

Saratoga;

Montgomery;

Schoharie;

Herkimer;

Otsego;

Oneida;

Chenango;

Delaware;

Onondaga;

Tioga;

Cayuga;

Ontario; tember; in the county of Ontario at the court house in the town of Canandagua in said county, the courts of common pleas on the third Tuesday of February and the first Tuesdays of June and November, and the court of general sessions of the peace on the said first Tuesdays of June and November; and in the county of Steuben at the court house in the town of Bath in said county, on the second Tuesday of January and the third Tuesdays of June and October.

Courts how long to continue in Albany and Rensselaer.

In the other counties.

Provido.

Further proviso, as to Rensselaer.

The said courts how to be adjourned if a sufficient number of judges do not appear.

Teste and return of process.

Adjournment not to affect process.

X. *And be it further enacted*, That the said courts in the said counties of Albany and Rensselaer may continue to be held from the time of their commencement on the several days aforesaid, Sundays excepted, until the several Tuesdays in the next week thereafter inclusive, and that the said courts in the said several other counties may in like manner continue to be held from the time of their commencement on the several days aforesaid, until the several Saturdays next following inclusive; *Provided however*, That it shall be lawful for the judges and justices of any of the said courts to adjourn the same on any day previous to the expiration of the term for which the same may be held as aforesaid, if in their opinion the business of such courts will admit thereof; *And provided also*, That the petit jurors attending the said courts in the said county of Rensselaer, shall in no case be required to attend the same longer than Saturday of the week in which the said courts shall commence.

XI. *And be it further enacted*, That if at any time hereafter a sufficient number of the persons authorized to hold any of the said courts of common pleas or general sessions of the peace, or mayor's courts, shall not attend for that purpose before five of the clock in the afternoon of the day on which such court is to be held, it shall be lawful for such one or more of them as shall attend to adjourn the same court to the next day, and if a sufficient number to hold such court do not attend before five of the clock in the afternoon of such next day, then it shall be lawful for such member or members of the same court as shall attend, to adjourn the same court to the next term or session thereof, or for the longest time that such court can by law be adjourned.

XII. *And be it further enacted*, That all writs or process which shall issue out of any of the said courts may be tested on any day of the term or session on which such court shall sit, and be made returnable on any other day of such term or session to which such court shall continue to sit or at the next term or session, except that the writs or process issuing out of any of the said mayor's courts shall not be tested and made returnable in the same term.

XIII. *And be it further enacted*, That the adjournment of any of the said courts before the expiration of their re-

specific terms or sessions shall not affect the teste, return or service of any writs issued prior to such adjournment.

XIV. *And be it further enacted*, That in every suit or prosecution now or which may hereafter be depending in any of the said courts of common pleas, mayor's courts or general sessions of the peace, such court shall be and hereby is authorized and empowered to issue process of *subpoena*, requiring the attendance of any witness who may reside in any part of this state, to testify on the trial of the said cause or on the execution of any writ or writs of inquiry to be executed therein, although such witness shall not be within the jurisdiction of the said court when served with the said *subpoena*; *And further*, That every witness who may be duly served with such *subpoena*, shall be and hereby is required to attend at the time and place therein mentioned, under the like penalties and shall be liable to the same action which he would have incurred or have been liable to for such refusal or neglect, if such witness had been within the jurisdiction of the said court at the time of the service of such *subpoena*; *Provided always*, That no seal shall be necessary to the validity of any *subpoena* issued from any court of general sessions of the peace for witnesses in support of any prosecution, but such *subpoena* shall be issued and subscribed by the person prosecuting on behalf of the people of the state in any such court; *And provided further*, That it shall be the duty of the clerk of each county to issue *subpoenas* under the seal of the courts of common pleas from the courts of general sessions of the peace of the county, on the application of any person against whom a criminal prosecution is pending in any such court, to compel the attendance of witnesses who reside in or out of the county, and for which several services the clerks shall be entitled to the same fees as are allowed for the like process in the courts of common pleas.

The said courts to issue process of *subpoena* into any county:

Penalty on witnesses for not obeying the same.

Process of *subpoena* from the sessions how to be issued.

XV. *And be it further enacted*, That all affidavits to be taken before any justice of the supreme court concerning any cause, matter or thing depending, or any proceedings to be had in any of the said courts of common pleas or courts of general sessions of the peace, or mayor's courts, may be used in the said courts respectively in the same manner, and shall be of the same force and effect as if they had been taken before one of the judges of the said respective courts.

Affidavits taken before a judge of the supreme court to be used in the said courts.

XVI. *And be it further enacted*, That in all records of judgments hereafter to be made up and entered in any of the said courts in any cause now depending or hereafter to be brought therein, it shall be sufficient immediately after the caption thereof to enter the declaration, without setting forth or entering upon the same record the plaint or process against the defendant, and then if judgment is not entered or the defendant shall not plead at the same

Form of records.

term of which the declaration is filed, an imparlance shall be entered to the term when judgment is entered, or the plea of the defendant shall come in without entering the continuances from term to term ; and when an issue shall be joined to be tried by a jury, if the same is not tried at the next term after the joining thereof, instead of entering all the continuances from term to term until the trial, it shall be sufficient to enter the continuance upon the record, in the following form : “ *And hereupon the process thereof is continued between the parties aforesaid of the plea aforesaid, in this same court, before the judges of the same court (or, before the judges and assistant justices of the same court,*” as the case may be) until the term when the same issue shall be tried or some necessary rule or order made concerning such cause or the trial thereof, if any such shall be made ; *And further, That the caption of all records of judgments in the said mayor's courts shall be in the following form : “ Pleas in the court of common pleas, called the mayor's court, held at (such place of, or in such city, as the same shall be actually held) in and for the said city, before the judges of the same court, on”* (such day as the process against the defendant in such cause shall be returnable, and be returned served.) And that the caption of all records of judgments in the several courts of common pleas in the several counties of this state shall be in the following form : “ *Pleas in the court of common pleas, held at (such place as the same court shall be actually held) in and for the county of Westchester, (or other county, as the case may be) before the judges and assistant justices of the same court, on”* (such day as the process against the defendant in such case shall be returnable, and be returned served.) And that it shall not be necessary in any such records in any of the said mayor's courts or courts of common pleas in the several counties, to insert the names of the mayor, recorder, aldermen, judges or assistant justices or any of them, either in the caption of the same records or in any continuance or other part thereof, nor shall it be necessary to set forth the authority by which any such court is held.

Diminution may be alledged on error.

XVII. *And be it further enacted,* That upon writ of error brought upon any such judgment, it shall be lawful to alledge any diminution, or defect or variance, or the want of any process or proceedings in the same manner, and the like proceeding shall be thereupon had as may or ought to be done in cases of error upon judgments in the supreme court.

Judges of the courts of common pleas to take affidavits to be read in the supreme court.

XVIII. *And be it further enacted,* That it shall and may be lawful for any judge of any court of common pleas, or any mayor or recorder of any city in this state to take affidavits to be read in the supreme court thereof, in like manner as any commissioner appointed by the same court is authorized to take affidavits to be read therein.

C H A P. CXIII.

An ACT concerning Oaths.

Passed 2d April, 1801.

I. *BE is enacted by the People of the State of New-York, represented in Senate and Assembly,* That every person who shall hereafter be elected a member of the senate or of the assembly of this state, before he takes his seat, and every person who shall hereafter be elected governor or lieutenant-governor of this state, and every person who shall hereafter be appointed to any office civil or military, before he enters upon the execution of his trust or office, shall and hereby is required to take and subscribe the following oath, that is to say :

Members of the legislature, and all officers civil & military to take an oath of allegiance :

I do solemnly, without any mental reservation or equivocation whatsoever, swear and declare, that I renounce and abjure all allegiance and subjection to all and every foreign king, prince, potentate and state, in all matters ecclesiastical as well as civil, and that I will bear faith and true allegiance to the state of New-York, as a free and independent state."

Form of the oath.

II. *And be it further enacted,* That every person who shall hereafter be elected governor or lieutenant-governor of this state, and every president of the senate who shall at any time administer the government of this state, shall also before he enters upon the execution of his trust or office, take the following oath of office, to wit :

Governor, lieutenant-governor and president of the senate to take an oath :

I elected governor, (lieutenant-governor, or, president of the senate, *as the case may be*) of the state of New-York, do solemnly swear and declare, that I will in all things, to the best of my knowledge and ability, faithfully perform the trust reposed in me as governor (lieutenant-governor, or, president of the senate, *as the case may be*) of the state of New-York, by executing the laws and maintaining the peace, freedom and independence of the said state, in conformity to the powers delegated unto me by the constitution of the said state."

Form.

III. *And be it further enacted,* That the president of the court for the trial of impeachments and the correction of errors, and every member of the said court, and all judicial officers in this state hereafter to be elected or appointed, shall also before they enter upon the execution of their respective offices, severally take and subscribe the following oath, to wit :

All judicial officers to take an oath :

I do solemnly swear and declare, that I will to the best of my knowledge and ability, execute the office of (*here describe the office*) according to the constitution and laws of the state of New-York, in defence of the freedom and independence thereof, and for the maintenance of liberty and the distribution of justice among the citizens and inhabitants of the said state, without any fear, favor, partiality, affection or hope of reward."

Form.

Secretary to
take an oath:

IV. *And be it further enacted*, That every person who shall hereafter be appointed secretary of this state, shall also before he enters upon the execution of his office, take and subscribe the following oath, to wit:

Form.

"I secretary of the state of New-York, do solemnly swear and declare, that I will in all things according to the best of my knowledge and ability, justly and honestly keep the records, parchments, papers and instruments of writing committed unto me, and which shall be from time to time hereafter committed unto me by virtue of my said office, and in all things to the best of my knowledge and understanding, faithfully and honestly perform the duty of my said office of secretary and the trust reposed in me, without favour or partiality."

Sheriffs, coroners and marshals of Hudson to take an oath:

V. *And be it further enacted*, That every person who shall hereafter be appointed sheriff or coroner of the city and county of New-York or Albany, or of any other county in this state, and the chief-marshal of the city of Hudson and every of their deputies, except such persons as may at any time be deputed by any sheriff to do a particular act only, shall also before he, they or any of them shall enter upon the execution of the said office, take the following oath, to wit:

Form.

"I sheriff (or, coroner, or, chief-marshal, or, deputy-marshal, or, under-sheriff, or, one of the deputies of the sheriff, *as the case may be*) of the city and county of New-York (or, Albany, or, Hudson, or, of the county of *as the case may be*) do solemnly swear and declare, that I will well and truly serve the people of the state of New-York in the office of sheriff (or, coroner, or, chief-marshal, or, deputy-marshal, or, under-sheriff, or, one of the deputies of the sheriff, *as the case may be*) of the said county (or, city and county, or, city, *as the case may be*) during my continuance therein; and will faithfully and truly execute or cause to be executed [*the words, or cause to be executed, to be omitted in the oath to be administered to an under-sheriff or deputy-sheriff, or deputy-marshal*] all writs and precepts which shall be delivered to me or come to and remain in my hands for that purpose, according to the best of my knowledge, skill and judgment, and that I will not corruptly or unjustly use or exercise the said office during the time that I shall remain therein, neither will I directly or indirectly accept, receive or take, by any colour, means or device whatsoever, or consent to the taking any manner of fee or reward whatsoever of or from any person or persons whomsoever for the summoning, impanelling or returning of any inquest, jury or *tales* in any court for the people of this state, or between party and party, other than such fees or reward as now are or hereafter shall be allowed by law for the same; and that I will not directly or indirectly exact or demand any man-

ner of fee or reward whatsoever from any person or persons whomsoever, for serving or returning of any writ, precept or process whatsoever, or for any other service whatsoever in my said office other than such fees or reward as now are or hereafter shall be allowed by law; but that I will demean myself honestly and impartially in all things that shall belong to the duty of my said office, according to the best of my knowledge, skill and ability."

VI. *And be it further enacted*, That every person who shall hereafter be appointed attorney general of this state or district attorney, shall before he enters upon the execution of his office, take and subscribe the following oath, viz.

Attorney general and district attorneys to take an oath :

"I appointed attorney general, (or, district attorney.) do solemnly swear, that I will in all things to the best of my knowledge and ability, perform the trust reposed in me."

Form.

VII. *And be it further enacted*, That every surrogate hereafter to be appointed, shall before he enters upon the execution of his office, take and subscribe the following oath, viz.

Surrogate to take an oath :

"I surrogate of the county of do solemnly swear, that I will in all things well and faithfully execute the office of surrogate of the said county, according to the best of my knowledge and ability."

Form.

VIII. *And be it further enacted*, That every person who shall hereafter be appointed register or clerk of any court, or clerk of any city or county in this state, shall also before he enters upon the execution of his office, take the following oath, to wit :

Registers and clerks to take an oath :

"I register (or, clerk, or, one of the clerks) of the court of (or, clerk of the county of or, of the city and county of or, of the city of as the case may be) do solemnly swear and declare, that I will justly and honestly keep the records, parchments, papers and writings committed to me by virtue of my said office and which shall be from time to time hereafter committed unto me, and in all things to the best of my knowledge and understanding faithfully and honestly perform the duty of my said office and the trust reposed in me, without favour or partiality."

Form.

IX. *And be it further enacted*, That all other ministerial officers hereafter to be appointed, shall also before they respectively enter upon the execution of their respective offices, severally take and subscribe the following oath, to wit :

All other ministerial officers to take an oath :

"I appointed to the office (here insert the officer's title of office) do solemnly promise and swear, that I will in all things to the best of my knowledge and ability, faithfully perform the trust reposed in me."

Form.

X. *And be it further enacted*, That the said oaths shall be taken and subscribed before such person or persons as

Before whom the oaths to be taken

Rolls how
disposed of.

shall be appointed by commission for that purpose under the great seal of this state, in nature of a *dedimus potestatem*, who shall take such subscriptions on rolls to be provided for that purpose containing proper captions, with the said oaths written at length thereon and subscribed with the proper names and hand writing of the several persons taking such respective oaths ; which rolls shall be disposed of as follows, to wit : Those containing the oaths and subscriptions of any governor, lieutenant-governor, president of the senate, member of the senate or assembly, chancellor, judge of the supreme court, judge of the court of probates or any officer of either of the said courts, or attorney general, or secretary of this state, or district attorney, or military officer whose office shall extend into more than one county, shall be deposited and kept in the office of the secretary of this state ; and those containing the oaths and subscriptions of the respective county officers, both civil and military, shall be deposited and kept in the office of the clerk of the same county.

Officers act-
ing without
taking the
oaths required
by law, how
punished.

XI. *And be it further enacted*, That if any officer, civil or military in this state, shall execute his office without having first taken and subscribed the oaths or affirmations required by law and the oath to support the constitution of the United States, such officers shall thereby forfeit their said offices respectively and be removed therefrom, and such neglect or omission is hereby declared to be a misdemeanor indictable and punishable by fine and imprisonment.

Clerks of the
counties annu-
ally to give
notice to the
governor of
officers who
have or have
not taken the
oaths,
And of all va-
cancies.

XII. *And be it further enacted*, That the clerk of each county in this state shall on or before the fifteenth day of January in every year, at the expence of this state, give information to the person administering the government of this state of such persons as have taken the oaths required by law to be taken, and of such as have neglected to take the same, and also of all vacancies in such county occasioned by death, removal or otherwise in any office civil or military.

Penalty for
not returning
the rolls :

XIII. *And be it further enacted*, That if any person whose name is inserted in the commission of *dedimus potestatem* in any of the counties of this state, shall not make a return of the rolls containing the names of all such officers to whom he shall have administered the oaths of office, within six months after he shall have administered the said oaths, every such person neglecting to make such return as aforesaid, shall forfeit to the people of this state the sum of twenty-five dollars, to be sued for and recovered with costs of suit before any court having cognizance of the same, by the clerk of the county in which the said person so making default as aforesaid shall reside, one moiety of which forfeiture when recovered shall by the clerk be paid into the hands of the treasurer of the said county, to be

How sued for
and applied.

disposed of in such manner as the board of supervisors of the county shall direct, and it shall be lawful for the said clerk to retain the other moiety of the said forfeiture for his own use.

XIV. *And be it further enacted*, That nothing herein before contained shall be construed to extend to any county treasurer, supervisor, town clerk, commissioner of the highways, overseer of the highways, assessor, collector, constable or other town officer.

The preceding sections not to extend to county treasurer and town officers.

XV. *And be it further enacted*, That it shall be lawful for every person empowered to administer an oath, to administer it in the following form, to all persons who shall declare they have conscientious scruples about the present mode of administering oaths by laying the hand on and kissing the gospels, to wit: The person swearing shall with his or her hand uplifted *swear by the ever living God*, and shall not be compelled to lay the hand on or kiss the gospels; and oaths so administered shall be equally effectual and expose such person to the like pains and penalties for wilful and corrupt perjury as oaths administered in the usual form.

Form of administering oaths in certain cases.

XVI. *And be it further enacted*, That every person believing in the existence of a Supreme Being, and a future state of rewards and punishments, who shall have conscientious scruples against taking an oath, shall in all cases where an oath is upon any lawful occasion to be administered, be admitted, instead of taking an oath, to make his or her solemn affirmation or declaration in the following form, to wit: "*You do solemnly, sincerely and truly declare and affirm*;" which solemn affirmation or declaration shall be equally valid as if such person had taken an oath in the usual form; and every person guilty of falsely and corruptly affirming and declaring as aforesaid, shall incur and suffer the like pains and penalties as are or shall be inflicted on persons convicted of wilful and corrupt perjury.

Persons entitled to affirm.

XVII. *And be it further enacted*, That it shall not be necessary for any commissioner of oyer and terminer and gaol delivery who at the time of acting as such shall hold any judicial office in this state, to take any oath mentioned in this act, but every other person named as such commissioner shall, before he acts as such, take and subscribe the oath first mentioned in this act and also the oath herein prescribed to be taken by judicial officers; *And further*, That no proceeding whatsoever before any commissioner named in any commission of oyer and terminer and gaol delivery, shall be void or in any manner impeached by reason that any commissioner therein named shall not have taken any oath in this act mentioned.

Commissioners of oyer & terminer when to be sworn.

Neglect therein not to affect the proceedings of such court.

C H A P. CXV.

An ACT for making Process in Courts of Equity effectual against Mortgagors who abscond or refuse to appear.

Passed 2d April, 1801.

What shall be deemed notice to a mortgagor who absconds or cannot be found :

If he does not appear, bill to be taken *pro confesso*.

Appraisement of the premises when to be made.

Time & mode of sale by the sheriff.

I. **B**E it enacted by the People of the State of New-York, represented in Senate and Assembly, That if in any suit against any mortgagor in the court of chancery, against whom a *subpena* or other process shall issue, such mortgagor shall not cause an appearance to be entered according to the rules of the said court, if such process had been duly served, and it shall appear by affidavit to the satisfaction of the said court that such mortgagor is withdrawn out of this state, or cannot upon due inquiry be found therein so as to be served with such process, the said court may make an order requiring such mortgagor to appear at a certain day therein named, a copy of which shall within twenty days be inserted in at least two of the public newspapers printed in this state for the term of eight weeks, and if such mortgagor do not appear within the time limited by such order, or within such further time as the court shall appoint, then on satisfactory proof made of the publication of such order in manner aforesaid, the said court may order the complainant's bill to be taken *pro confesso*, and thereupon decree a sale of the mortgaged premises or such part thereof as shall be sufficient to discharge the debt due to such mortgagee, together with the costs of such suit.

II. *And be it further enacted*, That the said court before such decree made, may cause the mortgaged premises to be appraised on oath by two appraisers to be appointed by the court, if the same shall be deemed necessary, or in its own discretion may proceed to make such decree without such appraisement, and upon such decree made a writ shall be issued from the said court to the sheriff of the county in which the mortgaged premises are situated, commanding him to make sale of the lands decreed to be sold at public vendue, and to return the monies arising from such sale into court on a day to be mentioned in such writ, not less than three months from the time of issuing the same; and the said sheriff shall thereupon cause an advertisement of the intended sale of such lands to be inserted in at least one of the public newspapers printed in the county where such lands lie, and if no newspaper is printed in such county, then in one or more of the public newspapers printed in this state and continue the same in the said paper or papers weekly for six weeks before the day to be by him appointed for the sale of the same; and at the day so by him notified shall proceed to sell the same to the highest bidder, and shall execute deeds for the same to the purchaser in such

manner as the case may require, and such deeds shall be of the same validity and as beneficial to the purchaser as if the same had been executed by the mortgagee and mortgagor, and shall be judged an entire bar against them and each of them, and their and each of their heirs and assigns, both in law and equity; and the monies arising by the sale of said mortgaged premises shall be applied to pay off and discharge the debt due to such mortgagee with such costs as the said court shall award, and the remainder, if any there be, shall be put at interest on such security as the said court shall think sufficient, and the same shall be paid to the mortgagor, or his executors, administrators or assigns upon his or their application to the court for the same; *Provided always*, That no greater estate in the premises sold shall at any time be granted or conveyed by the sheriff to such purchaser than would have vested in the mortgagee had the equity of redemption been duly foreclosed; *And provided also*, That if the mortgagor shall at any time before such sale cause his appearance to be duly entered in the said court and pay such costs to the mortgagee as the said court shall think reasonable, then a *supersedeas* shall issue from the said court directed to such sheriff, to stay his proceeding to the sale of such mortgaged premises; and upon such appearance being entered, such proceedings shall be thereupon had as if an appearance had been originally entered within the time required by the rules of the said court, in case the first process in the said suit had been duly served.

Operation of the sheriff's deed.

Monies arising from such sales, how applied.

Proviso.

Sale superseded on mortgagor's appearance.

III. *And be it further enacted*, That in all cases in which a decree for the sale of the mortgaged premises shall be made as aforesaid, and the mortgagee shall be paid the money alleged by him to be due as above directed, it shall be lawful for any such mortgagor within the space of seven years from the time of the sale of such mortgaged premises, if such mortgagee shall have received more money than was due to him, to file his bill in the said court against such mortgagee, and compel him to account for the sum really due at the time of such sale, and to refund what may have been over paid, together with interest from the time of such payment and the costs of suit, the former decree notwithstanding.

Mortgagee liable to account at any time within seven years.

IV. *And be it further enacted*, That the executors, administrators and assigns of every mortgagee shall in all respects be entitled to the like proceedings, and decree against any mortgagor who is withdrawn out of this state or cannot upon due inquiry be found therein as aforesaid, as by this act are provided in favour of such original mortgagee, and that such mortgagee, his executors, administrators or assigns, shall also be entitled to the like proceedings and decree against the heirs and assigns of any

Executors & other representatives of mortgagor & mortgagee within the purview of this act.

deceased mortgagor, in case such heirs or assigns are withdrawn out of this state or cannot be found therein as aforesaid, subject however in all cases to the regulations contained in this act.

C H A P. CXVI.

An ACT to regulate Sales by Public Auction, and to prevent Stock Jobbing.

Passed 2d April, 1801.

Goods sold at
auction sub-
ject to a duty.

Duty to be
paid by the
seller.

None to sell
at vendue but
licensed auc-
tioneers.

Auctioneers
appointed by
the council of
appointment.

Number in
New-York
limited to
twenty-four.

Auctioneers
to enter into
recognizance
with security
for the pay-
ment of du-
ties :

I. **B**E it enacted by the People of the State of New-York, represented in Senate and Assembly, That all goods, wares, merchandizes and effects whatsoever, which shall at any time hereafter be exposed to sale at public auction or vendue within this state, by any auctioneer or other person duly appointed and authorized as is herein after directed, shall be struck off to the highest bidder, and shall be subject, if the auction or vendue be in the city of New-York, to a duty of three dollars, and if in any other city or county of this state, to a duty of two dollars for every hundred dollars of the value or price at which the same shall be sold as aforesaid, and at and after the same rate for every greater or less sum, to be paid by the person who shall so sell the same, and in all cases where the auctioneer or the owner of such goods so exposed to sale, or any person employed by them or either of them, shall be the highest bidder, the said goods shall be subject to the payment of the said duties as if they had been sold to any other person.

II. *And be it further enacted,* That no person whatsoever, other than persons appointed and authorized in the manner herein after directed, or who may be duly authorized by and under the authority of the United States, shall sell or expose to sale at public auction or vendue within this state, any goods, wares, merchandize or effects whatsoever, and that the person administering the government of this state by and with the advice and consent of the council of appointment, shall annually appoint so many persons within this state to be auctioneers as they shall judge proper; *Provided always,* That the number to be appointed in and for the city of New-York shall not at any one time exceed twenty-four.

III. *And be it further enacted,* That no person so to be appointed an auctioneer by virtue of this act, shall enter upon the execution of his office until he shall have entered into recognizance to the people of this state with two sufficient freeholders as sureties, in the sum of five thousand dollars, conditioned for the payment of the duty herein before mentioned to the treasurer of the state and also that such person shall in all things well, truly

and faithfully behave and conform himself according to the true intent and meaning of this act, which recognizance in the city and county of New-York and in the cities of Albany and Hudson, shall be taken by the mayor or recorder of the said cities respectively, and in the counties of Albany and Columbia and the other counties of this state, by any judge of the court of common pleas for such county, and duplicates shall be made of the record of every such recognizance by the person taking the same, one whereof shall be delivered as soon as conveniently may be to the comptroller of this state, and the other shall be retained by the person taking the recognizance.

By whom the same to be taken.

IV. *And be it further enacted*, That every auctioneer duly appointed and authorized by virtue of this act in and for the city of New-York, who shall sell any goods, wares, merchandize or effects at public auction or vendue, shall within twenty days after the expiration of every three months, the three first months to be computed from the date of his recognizance as aforesaid, render a just and true account in writing subscribed by him to the mayor of the said city, of all goods, wares, merchandize or effects by him sold as aforesaid from the time of his entering into the recognizance aforesaid or the time that the last account by him was rendered as aforesaid, the amount of each day's sale and the days when the same were respectively sold; and shall thereupon take before the said mayor the following oath or affirmation, as the case may require:

Auctioneers in New-York when he how to account.

"I do solemnly and sincerely swear, (or, affirm) that the account now exhibited by me and to which I have subscribed my name, contains a just and true account of all the goods, wares, merchandize and effects sold by me, subject to duty by law within the time mentioned in the said account, and of the days upon which the same were respectively sold."

Oath to be taken when they account.

And every such auctioneer shall within ten days after the rendering such account and taking the said oath, pay the amount of duty upon such account of sales to the bank of New-York for the use of this state, which monies shall be credited by the said bank to the treasurer of this state, and the account with the oath indorsed and the receipt for the payment of the money to the bank, shall by the person rendering such account and making such payment, be immediately transmitted to the comptroller to be filed in his office; and the comptroller shall thereupon certify the same to the treasurer and charge him with the amount thereof.

Duties to whom paid.

V. *And be it further enacted*, That every auctioneer duly appointed and authorized by virtue of this act in any other city or county of this state, and who shall reside within sixty miles of the city of Albany, shall within the times

Auctioneers within sixty miles of Albany, when and to whom to account:

before limited render a like account to the comptroller of this state under the same oath to be administered by the comptroller, and shall within the like time thereafter pay the amount of duty upon such account of sales to the treasurer of this state; and that every auctioneer whose residence shall be more than sixty miles from the said city of Albany, shall render a like account under the like oath, and shall pay the amount of duties upon such account of sales unto the treasurer of this state within twenty days after the expiration of every six months, the first six months to be computed from the date of the recognizance so to be by him entered into as aforesaid.

When beyond
sixty miles.

Penalty on
auctioneers
who neglect
to account
and pay.

VI. *And be it further enacted,* That if any auctioneer shall neglect or refuse to render his account or pay the money due from him to the state for the duties according to law, the comptroller of this state shall in every such case certify and publish such neglect or refusal in one or more of the public newspapers of this state, and from the time of publishing such advertisement, every such delinquent auctioneer shall be deemed to have forfeited his appointment, and shall be thereafter disqualified from acting as an auctioneer under the same; and every such person so neglecting or refusing shall also for every such offence forfeit seven hundred and fifty dollars, which forfeiture the comptroller shall direct the attorney general to cause to be sued for and recovered in the name and for the use of the people of this state in any court of record having cognizance thereof.

Penalty on
persons sell-
ing at auc-
tion without
licence and
giving recog-
nizance.

VII. *And be it further enacted,* That every person who shall sell any goods, wares, merchandize or effects by way of public auction or vendue, without being previously appointed and without having entered into recognizance as aforesaid, shall forfeit the sum of one hundred and twenty-five dollars for each article so exposed to sale, to be recovered in manner aforesaid.

Certain lands
and goods
sold at auc-
tion not sub-
jected to a
duty.

VIII. *Provided always, and it is hereby further enacted,* That all lands and tenements and goods belonging to this state or the United States, and all goods and chattels which shall be seized by any public officer for or on account of any forfeiture or penalty, ships and vessels, goods and effects of deceased persons, or goods distrained for rent or taken in execution, effects of insolvent debtors, utensils of husbandry, goods damaged at sea and sold for the benefit of the owners or insurers within twenty days after the same shall be landed under the inspection of the wardens of the port of New-York, or of such inspector or inspectors as are hereinafter mentioned, horses, neat cattle, hogs, sheep, and also all articles the growth, produce or manufacture of this state, shall in no wise be subject to, but are hereby exempted and declared free from, the duty aforesaid, and may be sold by any person being

a citizen of this state in any part of this state other than the city and county of New-York; and that goods damaged at sea and sold for the benefit of the owners or insurers in any other city or county than the city of New-York, shall be sold under the inspection of such person or persons as shall be thereunto appointed in the cities of Albany and Hudson by the mayor, or in case of his sickness or absence the recorder of the said cities respectively, and in the counties of Albany and Columbia and the other counties in this state by the first judge, or in case of his sickness or absence any other judge of the court of common pleas for such county; and the said civil officers are hereby authorized and required to appoint in each such city or county one or more, not exceeding three, discreet persons to be inspectors of such damaged goods as aforesaid; *And provided further*, That nothing in this act contained shall extend to any sale or sales of ships, their tackle, apparel or furniture, or the cargoes thereof, which shall be stranded or wrecked within this state and sold for the benefit of the insurers or proprietors thereof.

And may be sold at auction except in New-York. Goods damaged at sea, by whom to be sold in other parts of the state except New-York.

This act not to extend to ships stranded or to their cargoes.

IX. *And be it further enacted*, That no auctioneer shall expose to sale by public auction or vendue within the cities of New-York, Albany or Hudson, any goods, wares, merchandize or effects liable to the duty aforesaid, but at their respective houses or stores, except rum, wine, brandy, molasses, indigo, rice, coffee, cotton, sugar, cordage, tobacco, mahogany, logwood, braileto, fustick, camwood, earthen ware in crates or casks, and provisions in casks, under the penalty of twenty-five dollars for every such offence, to be recovered in manner aforesaid; *And further*, That all goods, wares, merchandize or effects whatsoever, except books or prints not prohibited by law, which shall be exposed to sale at public auction or vendue within the said city of New-York, by any auctioneer duly authorized according to the directions of this act, shall be so exposed to sale in open day between sunrise and sunset; upon pain that every such auctioneer in the said city of New-York who shall act contrary hereto, shall for such offence be deemed to have forfeited his appointment, and shall be thereafter disqualified from acting as an auctioneer under the same.

Auctioneers in New-York, Albany and Hudson to sell at their own houses or stores, except certain articles.

Under a penalty.

Goods, except books and prints, to be sold in the day time.

Under a penalty.

X. *And be it further enacted*, That no auctioneer duly authorized as aforesaid or any other person whomsoever, shall at the day and place when they shall hold their public auction or vendue, sell at private sale any goods, wares, merchandize or effects liable to the duty aforesaid, under the penalty of one thousand two hundred and fifty dollars for every such offence; and no person shall expose to sale at public auction or vendue any goods, wares, merchandize or effects on which a duty is laid as aforesaid as a deputy to any auctioneer duly authorized as aforesaid or

Auctioneers not to sell at private sale on the day & place of public sales.

Under a penalty.

No person to sell as deputy to an auctioneer.

C H A P . CXXI.

An ACT relative to the State Prison.

Passed 3d April, 1801.

State prison ;

Inspectors
thereof to be
appointed :How often to
meet . . .Inspectors to-
gether with
the judges and
certain other
officers, to
make rules for
the govern-
ment of
the prison.Visiting in-
spectors.Inspectors to
have charge
of the prison,
and appoint a
keeper and as-
sistant keeper.Writs of ha-
beas corpus to
be returned
by the keeper.Salaries of the
respective
keepers, and
how paid.

I. *BE it enacted by the People of the State of New-York, represented in Senate and Assembly,* That the public building erected in the city of New-York for the reception of convicts shall be called the state prison, and that the person administering the government of this state, by and with the advice and consent of the council of appointment, shall as often as shall be requisite, appoint such number of persons for the said prison, not exceeding seven, as shall be necessary to form a board of inspectors therefor ; that the inspectors shall meet at the prison once at least in every month, and oftener if necessary or if required by the visiting inspectors herein after mentioned ; and that the said inspectors together with the justices of the supreme court, the mayor and recorder of the city of New-York, the attorney general and the district attorney for the district in which the said city shall be comprehended, or any two of them, shall have power from time to time to make such rules as they shall deem proper for the government of the convicts confined in the said prison, their diet, clothing and maintenance, and for all other the interior regulations of the said prison not inconsistent with the laws and constitution of this state and the intention of this act ; and the said inspectors shall appoint two or more of their members to be visiting inspectors, and renew such appointment at least once in every month, and whose duty it shall be to visit the prison once at least in every week.

II. *And be it further enacted,* That the inspectors shall have the charge and custody of the prison and of the prisoners therein, and that they may appoint and employ under them a principal keeper, and also as many assistant keepers as they shall deem proper, and designate one of the said assistant keepers as the deputy keeper ; and whenever there shall happen to be no principal keeper, all the duties and powers of principal keeper shall devolve on and be executed by the deputy keeper, until a principal keeper shall be appointed ; and all writs of *habeas corpus* to be granted in behalf of any person confined in the said prison, shall be directed to and returned by the keeper of the said prison ; and the said principal keeper shall receive for his services at and after the rate of eight hundred and seventy-five dollars annually, and the deputy keeper of the said prison for his services at and after the rate of four hundred dollars annually, and said assistant keepers respectively for their services at and after the rate of two hundred and fifty dollars annually, to be paid quarter-yearly by the inspectors, and to that end the said inspectors shall quarter-yearly transmit an account of the

salaries due to the keeper and each of the assistants respectively to the comptroller, who shall thereupon issue his warrant to the treasurer to pay the amount thereof to the said inspectors, and the treasurer shall pay the same out of any money then in the treasury.

III. *And be it further enacted*, That it shall and may be lawful for the inspectors of the state prison, either by themselves or by an agent or agents to be by them from time to time appointed, to purchase such cloathing, bedding, provisions, tools, implements, raw or other materials on which to employ the convicts, and generally whatsoever else may be requisite and incident to the execution of the trust conferred on the said inspectors by this act, and shall cause to be kept regular accounts of all the articles so to be purchased and of the avails arising on the sales of any articles manufactured by the convicts in the said prison; and shall also cause separate accounts to be opened for each of the convicts who shall from time to time be committed to the said prison, in which account the convict shall be charged with the expence of prosecution, cloathing, bedding and subsistence, and with a due proportion of the expence of the raw materials and implements upon which and with which such convict may be employed; and to credit such convict with the avails arising from any labour by him or her performed in such sums as they shall deem just and right, and if such credit shall exceed the debit side of the account, it shall be in the discretion of the inspectors when such convict is discharged to give such convict a part or the whole of such excess, and if the whole is not given to carry the residue to the credit of the state, together with the whole of such excess if any convict is sentenced to imprisonment for life and does not obtain his discharge by a pardon from the executive.

Inspectors to buy materials and employ convicts and open accounts for them.

IV. *And be it further enacted*, That in all cases where any person shall be adjudged to imprisonment in the state prison by virtue of this act, all expences and charges to arise in conveying such offender to the same, and also the sustenance and safe keeping of such offender therein shall be defrayed out of the treasury of this state.

Expence of conveying & keeping convicts to be borne by the state.

V. *And be it further enacted*, That when any person shall be sentenced to imprisonment in the state prison, the clerk of the court shall make and deliver a copy of the sentence to the sheriff, who shall, when he conveys such convict to the same, deliver the same copy with the prisoner to the keeper thereof, and the said keeper shall thereupon pay the said sheriff for conveying such convict to the said prison eighteen cents a mile, to be computed from the place where such prisoner was convicted, and shall deliver the account thereof to the inspectors who shall thereupon repay the said keeper out of any monies in their hands.

Sheriff's warrant for conveying convicts, & how he is paid.

Sheriffs authorized to command assistance in any county while conveying convicts to prison.

VI. *And be it further enacted*, That the sheriffs of the several counties within this state, during the time that they or either of them shall be conveying to the said prison any person convicted in any of the counties within this state according to this act, shall have the same power and the like authority to demand the assistance of any of the people of this state in securing every such person as if such sheriff were in the county for which he is appointed sheriff, and all persons shall be aiding and assisting such sheriff under the same penalties as if such sheriff was in his proper county.

Convicts how to be clothed, fed and kept at labour.

VII. *And be it further enacted*, That all such convicts as aforesaid who shall be sentenced to imprisonment in the state prison, shall be clothed in habits of coarse materials, uniform in colour and make, and be sustained upon inferior food at the discretion of the said inspectors, and shall be kept as far as may be consistent with their sex, age, health and ability to hard labour, in such manner as the inspectors shall deem just and right; and if the work to be performed is of such a nature as may require previous instruction and neither the keeper or assistants can give instruction therein, proper persons for that purpose, to whom a suitable allowance shall be made, shall be provided by the visiting inspectors to be appointed by virtue of this act, during which labor the said offenders shall be kept separate from each other if the nature of the employments will admit thereof, and when the nature of such employment requires two or more to work together, the principal keeper or an assistant shall if possible be constantly present.

Convicts how punished for disorderly behaviour.

VIII. *And be it further enacted*, That the principal keeper of the said prison shall have power to punish all convicts for assaults, profane cursing and swearing or indecent behaviour, idleness or negligence in work or wilful mismanagement of it, or of disobedience of any lawful orders or regulations, by confining such offenders in the solitary cells of the said prison, and by keeping them on bread and water only for such term as any two of the said inspectors shall judge proper and necessary.

Penalty for giving or selling spirituous liquors within the prison:

IX. *And be it further enacted*, That if the principal keeper of the said prison, or his assistants or servants, or other person whatever shall introduce into, or give away, or barter, or sell within the said prison any spirituous or fermented liquors, excepting only such as the said keepers shall use in their own families, or such as the inspectors thereof may permit, or such as may be required for any prisoner in a state of ill health and for such purpose prescribed by an attending physician, such person shall forfeit and pay the sum of twelve dollars and fifty cents, to be recovered with costs of suit by any person who shall sue for the same before any justice of the peace

How recovered & applied.

of the county, the one moiety of which forfeiture shall when recovered be retained by the person recovering the same, and the other moiety to be paid to the inspectors for the purposes in this act contained.

X. *And be it further enacted*, That the persons authorized to visit and inspect the prison at pleasure, shall be the governor, lieutenant-governor, chancellor, judges of the supreme court, and mayor, recorder, attorney general, district attorney, and such ministers of the gospel as actually reside in the said city and have charge of a church or congregation therein, and no other person shall be permitted to enter within the walls where the convicts shall be confined without a written licence signed by two of the inspectors.

Persons authorized to visit the prison at pleasure.

All other persons to have a written licence.

XI. *And be it further enacted*, That the inspectors shall from time to time appoint a physician to attend the prison, who shall receive a compensation for his services, to be determined by the inspectors; *And further*, That every duty enjoined on the board of inspectors may be executed by a majority of the board or the majority of such of them as shall be in office.

Physician to the prison.

Majority of inspectors a quorum.

XII. *And be it further enacted*, That the inspectors may at their discretion cause such convicts as may require it to be inoculated for the small pox; and that it shall be lawful for the said inspectors, whenever it shall be certified to them by the physician of the said prison, that the preservation of the health or life of a criminal adjudged to solitary confinement therein renders it necessary to remove the said criminal from such confinement, to remove and employ or dispose of him or her in the said prison, as they may think proper; and upon the recovery of the said criminal, he or she shall be returned to such solitary confinement.

Direction to inspectors as to the health of the convicts.

XIII. *And be it further enacted*, That it shall be lawful for the mayor, aldermen and commonalty of the said city in common council convened, to designate such of the firemen of the said city as they shall deem proper to be the firemen attached to the state prison, and to that end to increase the number of firemen of the said city as they shall judge necessary for that purpose; and it shall be the duty of the said firemen so attached to repair to the said prison upon any signal being given of a fire in or about the same, or of any disturbance therein or attempt to escape therefrom, and then subject themselves to the orders of the keeper of the said prison or the inspectors, or either of them, for the suppression of disturbances, prevention of escapes and the extinguishment of fires.

Firemen attached to the prison, and their duties.

XIV. *And be it further enacted*, That the inspectors shall account annually with the comptroller for the expenditure of all monies received by them in the execution of their trust, and shall deliver their accounts to the comp-

Inspectors annually to account with the comptroller.

troller to be audited on or before the third Monday of January in every year.

Salary of the agent employed to purchase and sell.

XV. *And be it further enacted*, That the agent employed in purchasing materials for the use of, and disposing of the articles manufactured in the said prison, shall be allowed at and after the rate of one thousand five hundred dollars a year as a compensation for his services, including clerk hire and stationery, which salary shall be paid out of the avails arising on sales of articles manufactured by the convicts in the said prison.

Boots & shoes to be stamped.

XVI. *And be it further enacted*, That all boots, bootees, shoes and slippers made in the said prison, shall be stamped on the most convenient part of the outer sole of every such boot, bootee, shoe or slipper with the words "*State Prison*," and that no boots, bootees, shoes or slippers, other than those actually made in the state prison and thus stamped, shall be sold in the state prison or in any ware-house established under the direction of the inspectors of the state prison in the city of New-York.

Penalty for selling them without being stamped, and for counterfeiting such stamp.

XVII. *And be it further enacted*, That if the keeper or clerk, or any person employed in the said prison or in such ware-house, shall expose to sale any boots, bootees, shoes or slippers not made in the state prison and so stamped, shall forfeit for every such offence fifty dollars; and if any person shall counterfeit said stamp, or shall expose to sale any boots, bootees, shoes or slippers with such counterfeit stamp, knowing the same to be counterfeit, such person shall forfeit for every such offence one hundred dollars, to be recovered by action of debt by any person who will prosecute for the same before any court having competent jurisdiction, with costs of suit.

Support of prisoners and certain other expences defrayed out of the proceeds of manufactured articles.

XVIII. *And be it further enacted*, That the said inspectors shall pay out of the monies arising on the sales of articles manufactured in the said prison, such sums as may be requisite from time to time for the support of the prisoners and the expences of conveying them to the said prison, and other necessary expences not specially provided for.

Bringing or conveying letters, or any verbal communication with the prisoners, declared a public offence.

XIX. *And be it further enacted*, That it shall be deemed an offence against the people of this state for any assistant keeper of the said prison, or any servant or workman employed in or about the said prison, or for any other person to convey out of or bring into the said prison by request, desire or procurement of any prisoner confined in the said prison, or by any other person, any letter or writing whatsoever, without leave of the inspectors or of one of them so to do, and that it shall also be deemed an offence against the people of this state for any assistant keeper, or any servant or workmen employed about the said prison, or for any other person not permitted by law *ex officio* to visit the said prison without such leave as last

alforesaid, to make any verbal or parol communication between any person confined in the said prison and any person not a prisoner in the said prison and not belonging thereto and not having a right *ex officio* to visit the same.

XX. *And be it further enacted*, That the person administering the government of this state shall forthwith cause to be raised a guard, which shall be called the state prison guard, and shall consist of one captain, one sergeant, two corporals, one drummer, one fifer and not more than twenty privates, who shall all be native Americans, and not less than twenty-one nor more than forty years of age, and shall engage themselves for the term of three years at least ; *Provided however*, That the person administering the government may discharge them sooner if he shall think proper so to do.

State prison guard established :

XXI. *And be it further enacted*, That the monthly pay of the said guard shall be as follows : That of the captain shall be forty dollars, that of the sergeant twenty-five dollars, that of the corporals twenty-two dollars and that of the privates nineteen dollars, which shall be in lieu of every compensation, except the articles to be furnished to them as is hereinafter mentioned.

Monthly pay thereof.

XXII. *And be it further enacted*, That the said non-commissioned officers and privates shall be furnished with necessary arms, ammunition and accoutrements at the expence of the state, which arms and accoutrements shall be delivered to the inspectors of the said prison at the expiration of their several terms of service, and shall wear such uniform as the person administering the government for the time being shall direct, and shall also annually receive the following articles of uniform cloathing, to wit : One hat, one coat, one watchcoat, one vest, two pair of woolen and two pair of linen overalls, four pair of shoes, four shirts, four pair of socks, one blanket, one flock and clasp and one pair of buckles.

Arms & uniform of such guard.

XXIII. *And be it further enacted*, That for the accommodation of the said guard, a barrack shall be erected near the said prison under the direction of the mayor of the said city, and upon such plan and construction as he shall think proper, and the treasurer of this state shall from time to time pay to the order of the said mayor, on the warrant of the comptroller, the sum or sums therein mentioned for defraying the expences of erecting the said barrack ; *Provided*, That such sums shall not exceed in the whole one thousand dollars.

Barrack to be erected.

Provido.

XXIV. *And be it further enacted*, That the said guard shall be stationed at or near the said prison, and shall be under the direction of the mayor of the said city, and shall obey all such orders, rules and regulations as he may from time to time give or make for their better and more effectual guarding of the said prison, for preventing es-

Guard placed under the direction of the mayor of N. York.

Proviso. capes therefrom, and for apprehending such of the convicts as may have effected their escape; *Provided however,* That it shall not be lawful for the said mayor to employ the said guard in any other way, or to exact any other service or duty from them than such as are herein before particularly mentioned.

Defection how punished. XXV. *And be it further enacted,* That if any non-commissioned officer or private shall desert from the said guard, he shall on conviction thereof by a jury, be sentenced to imprisonment in the said prison for a term not exceeding five years; *And further,* That it shall be lawful for the mayor of the said city, on request in writing made by the inspectors of the said prison or a major part of them, to dismiss from the said guard any of the non-commissioned officers or privates, of which he shall give immediate notice to the person administering the government, whose duty it shall be to cause every vacancy in the said guard, by death or otherwise, to be filled as soon as may be after the same shall happen.

Expences of such guard how paid.

XXVI. *And be it further enacted,* That the treasurer of this state shall from time to time pay to the inspectors of the said prison, on the warrant of the comptroller, such sums as it shall appear to the comptroller are necessary for the payment of the said guard and for the purchase of the arms, ammunition and accoutrements and the other articles with which they are to be furnished as aforesaid.

Captain thereof how appointed.

XXVII. *And be it further enacted,* That the person administering the government of this state by and with the advice and consent of the council of appointment, shall appoint the captain of the said guard during the pleasure of the said council.

C H A P. CXXIV.

An ACT to prevent digging up and removing Dead Bodies for the Purpose of Dissection.

Passed 3d April, 1801.

The offence of digging up or dissecting dead human bodies, punishable by fine and imprisonment.

BE it enacted by the People of the State of New-York, represented in Senate and Assembly, That if any person shall with intent to dissect, dig up or remove, or be aiding or assisting in digging up or removing any dead human body, which shall have been interred in any cemetery or burial place within this state, or shall dissect, or aid, abet or assist in dissecting such human body, every such person shall be deemed guilty of a public offence, and being thereof convicted in the supreme court, or in any court of oyer and terminer and gaol delivery or general sessions of the peace, shall suffer such punishment by fine or imprisonment, or both, as the court before whom such conviction shall be had, shall in their discretion think proper.

It And be it further enacted, That the supreme court, or any court of oyer and terminer and gaol delivery, when any offender shall be convicted in any such court of murder, for which such person shall be sentenced to suffer death, may at their discretion add to the judgment that the body of such offender be delivered to a surgeon for dissection; and the sheriff who is to cause such sentence to be executed, shall accordingly deliver the body of such offender after execution done, to such surgeon as such court shall direct for the purpose aforesaid; *Provided however,* That such surgeon or some other person by him appointed for that purpose, shall attend to receive and take away the dead body at the time of the execution of such offender.

Persons convicted of murder may be ordered for dissection.

Provida.

C H A P. CXXV.

An ACT apportioning the Representation in the Legislature of this State, according to the Rule prescribed by the Constitution.

Passed 3d April, 1801.

I. *BE it enacted by the People of the State of New-York,* represented in Senate and Assembly, That the four great districts of this state for the election of senators, shall respectively comprehend the following parts of this state, to wit: The southern district the city and county of New-York, and the counties of Suffolk, Queens, Kings, Richmond and Westchester; the middle district the counties of Rockland, Orange, Ulster, Greene, Delaware, Dutchess and Columbia; the eastern district the city and county of Albany, and the counties of Rensselaer, Saratoga, Washington, Essex and Clinton, and the western district the counties of Schoharie, Montgomery, Otsego, Herkimer, Oneida, Chenango, Onondaga, Cayuga, Tioga, Ontario and Steuben, and that the number of senators to be chosen in each of the said districts shall be as follows: In the southern district nine, in the middle district twelve, in the eastern district eleven, and in the western district eleven; and that the senators elected or to be elected in each of the said districts, shall belong to the several classes already ascertained for that purpose, until further provision be made in the premises.

The four great districts for the election of senators.

Number of senators for each.

II. *And be it further enacted,* That the number of members of the assembly to be chosen in each of the counties of this state, shall be as follows, to wit: In the city and county of New-York thirteen, in the county of Suffolk four, in the county of Queens four, in the county of Kings one, in the county of Richmond one, in the county of Westchester five, in the county of Rockland one, in the county of Orange five, in the county of Ulster four, in the county of Dutchess ten, in the county of

Number of members of assembly in each county.

Columbia six, in the county of Delaware two, in the county of Greene two, in the county of Albany eight, in the county of Rensselaer six, in the county of Saratoga five, in the county of Washington six, in the counties of Clinton and Essex one, in the county of Schoharie one, in the county of Montgomery six, in the county of Otsego four, in the county of Herkimer three, in the county of Oneida three, in the county of Chenango two, in the county of Onondaga one, in the county of Cayuga one, in the county of Tioga one, and in the counties of Ontario and Steuben two.

Now member of assembly to be chosen and returned in the counties of Clinton and Essex,

And Ontario and Steuben.

III. *And be it further enacted*, That until other legislative provision be made in the premises, the electors of the said counties of Clinton and Essex shall give their votes for the said member of assembly in the same manner as if the said county of Essex was part of the said county of Clinton; and the electors of the said counties of Ontario and Steuben shall also give their votes for the said two members of assembly in the same manner as if the said county of Steuben was part of the said county of Ontario, and that the respective clerks of the said counties of Essex and Steuben shall within ten days after the time appointed for the inspectors of the several towns in said counties delivering to them the certificates of the number of votes given in such towns for each candidate for the assembly deliver or by a sworn deputy cause the said certificates to be delivered to the clerks of the said counties of Clinton and Ontario respectively, who shall calculate the same together with the votes given in their respective counties, and for that purpose shall not make such calculation until the expiration of the said ten days, and shall then from the whole of the said certificates determine the persons duly elected by the greatest number of votes as members of the assembly for the said counties of Clinton and Essex, and of Ontario and Steuben respectively, and further proceed therein as is directed by the act entitled *An act for regulating elections*.

C H A P. CXXVII.

An ACT for the Preservation of the Fishery in certain Waters.

Passed 3d April, 1801.

Penalty for obstructing the course of salmon in certain rivers

I. **B**E it enacted by the People of the State of New-York, represented in Senate and Assembly, That it shall not be lawful for any person to draw any seine, set any net, make any wier or other obstructions in the following rivers running into lake Ontario, viz: The big salmon river or creek, the little salmon river or creek, the great sandy river or creek and the little sandy river or creek, or within one hundred rods from the mouths thereof, to divert the

salmon in their usual course in the going up the said rivers or creeks, and every person offending therein shall for every such offence forfeit twenty-five dollars besides the salmon he may take by such seine, net, wier or other obstruction, to be recovered with costs of suit by action of debt in any court having cognizance thereof, the one half of which forfeitures when recovered shall be paid to the prosecutor and the other half to the overseers of the highways of the town where such recovery shall be had, to be applied to the repairing of the roads in such town.

How recovered & applied.

II. *And be it further enacted*, That it shall not be lawful for any person to make any dam across any part of the said rivers or creeks below where salmon are found, so as to prevent the usual course of the salmon from going up the said rivers or creeks, and every person so offending shall for every such offence forfeit five hundred dollars to be recovered as aforesaid for the uses aforesaid, and such dam shall be adjudged a public nuisance.

Penalty for obstructing salmon by dams in said rivers, & such dams declared nuisances.

III. *And be it further enacted*, That the owner or owners of mill or other dams which were on the twenty-eighth day of March, one thousand eight hundred, made across any river or creek running into lakes Ontario, Erie or Champlain, so as to prevent the usual course of the salmon from going up the said rivers or creeks, shall on or before the first day of October next so alter such dam by making a slope thereto not exceeding forty five degrees, and planked in such smooth manner that salmon may easily pass over into the waters above the dam, or by removing the obstructions of such dam in any other manner so that salmon may freely pass into the waters above such dam, under the penalty of two hundred dollars, to be recovered and applied as aforesaid; and in case such dam shall not be so altered within the time above mentioned, such dam shall be adjudged a public nuisance.

Dams already built on certain rivers to be altered so as to admit salmon to pass

Penalty for not obeying the same.

IV. *And be it further enacted*, That it shall not be lawful for any person after sunset and before sunrise, in the months of April and May in any year, to set or cause to be set or placed, any net or fike in or across that part of Croton river which is in the county of Westchester, and every person offending therein shall for every such offence forfeit and pay five dollars, to be recovered by action of debt with costs before any justice of the peace, the one half of which sum when recovered shall be for the use of the poor of the town where the offence shall be committed and the other half for the use of the person prosecuting for the same; and that it shall not be lawful for any person to fish with a net or seine in the waters of Otsego lake between the twenty-fifth day of May and the first day of October in any year, and every person offending therein shall for every such offence forfeit and pay ten dollars, to be recovered and applied in like manner.

Penalty for fishing in Croton river or lake Otsego within certain parts of the year.

An ACT for the Inspection of Flour and Meal.

Passed 3d April, 1801.

Inspectors of
flour to be
appointed.Inspectors in
New-York &
Albany to ap-
point deputiesInspectors to
take an oath :

Form.

Inspector in
New-York to
appoint a de-
puty in
Kings county.Flour inspect-
ed in Kings
county may
be exported.Wheat and
rye flour, In-
dian & buck-
wheat meal
to be inspect-
ed.Casks con-
taining In-
dian meal
when not to
be branded.

I. *BE it enacted by the People of the State of New-York, represented in Senate and Assembly,* That the person administering the government of this state by and with the advice and consent of the council of appointment, shall from time to time appoint an inspector of flour and meal in each of the cities of New-York and Albany, and as many inspectors of flour and meal in each county in this state as shall appear necessary, and that the inspectors already appointed shall continue to hold their respective offices during the pleasure of the said council ; and it shall be lawful for the inspectors of the said cities of New-York and Albany, by writing under their respective hands and seals, to appoint as many deputies as they shall think necessary to assist them in the execution of their office and to displace them at pleasure, and all acts of such deputies shall be performed in the name of their respective principals.

II. *And be it further enacted,* That the inspectors who shall be appointed in pursuance of this act, before they enter upon the execution of their respective offices, shall take the following oath or affirmation before one of the judges of the court of common pleas, or if in the cities of New-York or Albany, before the mayor or recorder thereof, viz.

" I A. B. do swear (or, affirm) that I will faithfully, truly and impartially, according to the best of my judgment, skill and understanding, execute, do and perform the office and duty of inspector and examiner of flour and meal, according to law."

III. *And be it further enacted,* That the inspector appointed agreeably to this act for the city and county of New-York, may execute and perform the duties of his office in the vicinity of New-York, and shall appoint a deputy in Kings county to inspect all flour and meal manufactured for exportation in the said county, which flour and meal so inspected may be exported from the said county and from any other port of this state in like manner as if the same had been inspected in the city of New-York.

IV. *And be it further enacted,* That no wheat flour, rye flour, Indian meal or buckwheat meal shall be shipped for exportation out of this state before the same shall have been submitted to the view and examination, and approved of and branded by one of the inspectors aforesaid ; and it shall not be lawful for such inspector to brand any cask containing Indian meal unless the same shall have been made of corn properly kiln-dried and shall be ground fine and bolted.

V. *And be it further enacted*, That all wheat flour, rye flour, Indian meal or buckwheat meal manufactured for exportation as aforesaid, shall be packed in good and strong casks made of seasoned oak or other suitable timber, each cask whereof shall be hooped with at least ten hoops, three of which hoops shall be on each chime and properly nailed, which said casks shall be of but two sizes, one size whereof shall contain one hundred and ninety-six pounds of flour or meal, with staves of twenty-seven inches long and each head sixteen inches and one half diameter, the other size whereof shall contain ninety-eight pounds of flour or meal, the staves whereof may be twenty-two inches long and each head fourteen inches diameter, or the staves may be twenty-seven inches long and each head not to exceed twelve inches diameter, both which sizes of casks shall be made nearly straight for the convenience of stowage, and the tare of said casks respectively shall be marked on one head with a marking iron; *Provided nevertheless*, That nothing in this act shall be construed to prevent the packing of Indian meal in hogheads for exportation, which shall contain eight hundred pounds and be duly inspected and branded; and each cask of flour and meal packed as aforesaid shall be branded with the initials of the christian name and surname of the manufacturer thereof at full length, together with the nett weight of flour or meal which shall be contained in each cask, except hogheads of Indian meal, on which the nett weight only shall be branded; and on each cask of wheat flour intended for the first quality shall be branded the word "*Superfine*," and on each cask intended for the second quality shall be branded the word "*Fine*," and on each cask intended for the third quality shall be branded the words "*Fine Middlings*," and on each cask intended for the fourth quality shall be branded the word "*Middlings*," and on each cask of rye flour intended for the first quality shall be branded the words "*Superfine Rye Flour*," and on each cask intended for the second quality shall be branded the words "*Fine Rye Flour*," and on each cask of Indian meal shall be branded the words "*Indian Meal*," and on each cask of buckwheat meal shall be branded the word and letter "*B. Meal*," before either respectively shall be offered for inspection; and the manufacturer or owner of any flour or meal put up in a cask or casks, shall be and hereby is made subject to a penalty or fifty cents for every pound each such cask is tared less than the true weight thereof, and any inspector of flour or meal having reason to suspect such cask or casks to be falsely tared may ascertain the same by a suitable examination thereof.

Size & quality of flour & meal casks.

Casks containing different qualities how branded.

Penalty on taring casks less than the true weight.

VI. *And be it further enacted*, That it shall be the duty of the said inspectors upon application to them made, to examine and determine the quality of such flour and meal,

Inspectors to examine flour & meal, and how to brand the same.

And to correct erroneous brands,

And weigh casks suspected to be light, & brand the same.

Compensation to the inspectors for weighing light casks.

Penalty on the manufacturer in such cases.

Penalty for exporting flour or meal marked bad or light.

Compensation to inspectors for examining as aforesaid.

Penalty for exporting flour or meal not inspected at the place of exportation.

and on each cask made and branded and the flour or meal packed therein agreeably to this act, he shall then and not otherwise brand the initial letter of his christian name and his surname at full length, together with the name of the county where the same is inspected on the quarter in a distinguishable manner ; and in all cases where the brands describing the quality of flour or meal shall not in his judgment be branded according to its respective kinds and qualities, he shall alter the same so as to describe the real quality according to the true intent and meaning of this act ; that it shall be the duty of the inspector from time to time to weigh such casks of flour and meal as he or they shall suspect of being too light, and if found not to contain the just and true weight, to mark or brand the same on the head with the word "*Light*," and for each cask which he or they shall so mark or brand with the word "*Light*," such inspector shall be entitled to and receive from the owner or shipper of such flour or meal for his trouble of weighing the same, that is to say : For every barrel or half barrel the sum of twenty cents, and for each hoghead forty-five cents ; and every cask of flour or meal which shall not contain the full weight branded thereon, the manufacturer thereof shall forfeit and pay for every pound weight of flour or meal so deficient the sum of twenty cents, and on all flour or meal injured in manufacturing or otherwise damaged so as not to be fit for exportation under any denomination in the judgment of said inspector, he shall mark or brand on the same the word "*Bad*," which flour or meal so marked or branded "*Light*" or "*Bad*" shall not be shipped out of this state under the penalty of five dollars for every cask so marked or branded, to be recovered in any court having cognizance thereof, by action of debt by any person who shall prosecute for the same ; and for the trouble aforesaid the said inspectors shall be entitled to receive two cents for each and every cask of flour or meal, and four cents for each and every hoghead of Indian meal he shall so inspect or examine, to be paid him by the owner or possessor of such flour or meal, who shall charge the buyer or purchaser of such flour or meal with one half of the amount of such inspection, over and above the price of such flour or meal.

VII. *And be it further enacted*, That all flour and meal purchased for exportation shall be inspected as aforesaid at the time and place of such exportation, and if any purchaser of flour or meal for exportation shall not have the same inspected as aforesaid at the time and place of such exportation, such purchaser or exporter shall forfeit and pay for every cask of flour or meal five dollars, although the said flour or meal may have been inspected and branded any time previous to such purchase.

VIII. *And be it further enacted*, That if any person shall lade or attempt to lade on board any vessel, with intent to ship or export the same direct out of this state, any flour or meal not branded as aforesaid by one of the inspectors for good and merchantable flour or meal, such person shall forfeit the same; and if any person shall have exported any flour or meal out of this state not branded by one of the inspectors for good and merchantable flour or meal, such person shall forfeit and pay the sum of five dollars for every cask of flour or meal so exported.

Penalty for shipping or exporting flour or meal not branded.

IX. *And be it further enacted*, That it shall be lawful for any inspector of flour and meal to enter on board of any vessel, between sunrise and sunset, to search for flour or meal that he may have reason to suspect has been shipped contrary to the true intent and meaning of this act, and if any person shall hinder or interrupt any such inspector in so entering on board and searching, every such person shall forfeit and pay one hundred dollars, to be recovered in any court having cognizance thereof, one half to the use of the overseers of the poor in the city or town where the offence may happen, and the other half to the person prosecuting for the same.

Inspectors authorized to search vessels.

Penalty for interrupting such search.

X. *And be it further enacted*, That no inspector of flour or meal shall purchase any flour or meal other than for his own private use under the penalty of five hundred dollars; and if any person shall alter or counterfeit any of the aforesaid brand marks whether state or private, such person shall forfeit for every such offence the sum of one hundred dollars; and that if any person shall put any flour or meal in any empty casks for sale which have been branded by the inspector before such casks were emptied without first cutting out the said brands, such person shall for every cask so repacked forfeit and pay the sum of five dollars; and that every person offering for sale any flour for wheat flour, which shall be found upon examination to be or contain a mixture of Indian meal or any other mixture, such person shall forfeit and pay for every such cask so mixed the sum of five dollars, and the flour shall be liable for the payment thereof; and if any person having charge of any vessel shall transport into the city of New-York any Indian meal upon the deck of such vessel, the master, owner or person having charge of every such vessel, shall forfeit and pay twenty cents for every barrel and eighty cents for every hogshhead of meal so transported as aforesaid.

Inspectors not to purchase flour or meal except for their own use, under a penalty. Penalty for altering or counterfeiting any brand mark.

Penalty for packing flour or meal in empty casks already branded.

Penalty for offering for sale flour mixed with Indian meal or other mixture.

Penalty for transporting into N. York flour on decks of vessels.

XI. *And be it further enacted*, That all such fines, penalties and forfeitures as aforesaid, not herein otherwise directed to be collected, shall be recoverable before any justice of the peace, or in any court of record in this state having cognizance thereof, by any person who will prosecute for the same, one half to the prosecutor and

Penalties how recovered and applied.

the other half to be paid to the overseers of the poor of the city or town where the fraud is detected ; and for the more certain and easy recovery of the penalties for the false tare or brand mark upon any cask of flour or meal, it shall be lawful for the inspectors thereof to seize and sell the same, and out of the nett proceeds retain such penalty or penalties, one half for his own use and the other half to the overseers of the poor in the city or town where the same may be recovered, to the use of the poor thereof, and pay the remainder to the owner or consignee of such flour or meal.

C H A P. CXXXI.

An ACT for giving Relief in Cases of Insolvency.

Passed 3d April, 1801.

Insolvent
debtors in
conjunction
with three
fourths in
value of their
creditors,
may petition
the chancellor
or a judge to
be discharged.

I. **B**E it enacted by the People of the State of New-York, represented in Senate and Assembly, That it shall be lawful for any debtor who now is or hereafter shall become insolvent, in conjunction with so many of his creditors, or the attorney of any creditor in cases, where the principal of such attorney resides without this state, who have or shall have debts *bona fide* owing to them by such insolvent, amounting at least to three-fourths of all the money owing by such insolvent, whether the same be then due or to become due and payable thereafter, in order to obtain a general discharge, to present a petition to the chancellor of this state or to any one of the justices of the supreme court, or to any one of the judges of any court of common pleas, praying that such insolvent's estate may be assigned and such insolvent discharged according to this act : *Provided*, That no person shall become a petitioning creditor who may have purchased or procured to be assigned to him, any debt due or to become due by such insolvent, except for so much only as was actually and *bona fide* given for the debt so purchased or procured.

Proviso.

Creditors ha-
ving certain
securities not
to be petition-
ers without
relinquishing
the same,

II. *And be it further enacted*, That any person having any mortgage, judgment, assignment or other real security of or upon any lands, tenements, hereditaments, goods or chattels, or thing in action whatsoever, either to such person or to any other in trust for such person for securing the payment of any sum of money from such insolvent, shall not for such sum become a petitioner in favour of such insolvent, unless such person shall upon signing the petition aforesaid, add to his name subscribed to the same petition a declaration in writing, that he doth thereby relinquish and give up to the assignee or assignees to be appointed by virtue of this act such mortgage, judgment, assignment or other security for the benefit of all the

creditors of such insolvent ; and every such mortgage, judgment, assignment and security, so relinquished as aforesaid and the lands, tenements, hereditaments, goods and chattels and things in action so mortgaged, assigned or affected by such judgment or security, shall with the residue of such insolvent's estate vest in the assignee or assignees of such insolvent's estate, for the purpose aforesaid.

Which shall thereupon vest in the assignee.

III. *And be it further enacted*, That to every petition to be presented to the said chancellor, justice or judge, shall be annexed an affidavit of each petitioning creditor, made before a master in chancery or one of the justices of the supreme court, or one of the judges of the court of common pleas of any county in this state, that the sum annexed to the name of such petitioning creditor is justly due to him, or will become due to him at some future time to be specified in such affidavit, and that he or any other person to his use hath not received from such insolvent or any other person any payment of part of his demand against such insolvent in money, or by sale, conveyance, assignment or delivery of any lands, tenements, hereditaments, goods, chattels or any thing in action, or any gift or reward whatsoever, upon any express or secret or implied contract, promise, trust or confidence that he should become a petitioner for and in behalf of such insolvent.

Affidavit of the creditors.

IV. *And be it further enacted*, That no debt due by such insolvent to any person who shall petition in favour of such insolvent by attorney, shall be taken and deemed to make any part of the three-fourths in value of the debts due by such insolvent, unless such petitioning attorney shall deliver unto the chancellor, or to the justice of the supreme court to whom such petition shall be made, or to the court of common pleas of which the judge to whom such petition shall be made was a member, the original accounts or authenticated copies thereof, and the original specialties, if any, on which the debt to his principal has arisen, with an affidavit of such principal annexed in the form of the oath herein before prescribed to be taken by every petitioning creditor of such insolvent, which affidavit shall be made before a judge or justice of one of the superior or supreme courts, or a notary public of the state or kingdom wherein such creditor shall reside, and be certified under the hand and seal of such judge, justice or notary public.

Proceedings where the creditors petition by attorney.

V. *And be it further enacted*, That every such insolvent shall deliver or cause to be delivered to the chancellor, or justice of the supreme court, or judge of the court of common pleas at the time of presenting such petition, a full, just and true account of all his creditors and the monies owing to them respectively by such insolvent, and also a full, true and just inventory of all the estate both real and personal, in

Debtor to deliver an account of his creditors, & inventory of his estate.

And take an oath :

law and equity of such insolvent, and of all the books, vouchers and securities relating to the same ; and the said chancellor, justice or such judge of the court of common pleas shall administer to such insolvent an oath to the following effect :

Form.

" I do swear that the account of my creditors and the inventory of my estate which are both herewith delivered, are in all respects just and true, and that I have not at any time or in any manner whatsoever disposed of or made over any part of my estate for the future benefit of myself or my family, or in order to defraud any of my creditors, and that I have in no instance created or acknowledged a debt for a greater sum than I honestly and truly owed, or with intent to aid my discharge under the " Act for giving relief in cases of insolvency."

Advertisement requiring the creditors to show cause.

Which oath being taken by such insolvent, he and the petitioning creditors or one of them shall cause an advertisement to be published for six weeks successively in the newspaper printed by the printer of this state, and such other newspapers as the chancellor, justice, judge or recorder to whom such application shall be made may direct, and shall also cause a copy of such advertisement to be put up six Mondays successively on the outward door of the court house or gaol of the city or county in which such insolvent shall reside or be imprisoned, and by which advertisement all the creditors of such insolvent shall be required to shew cause, if any they have, by such a day as shall be appointed by the chancellor or justice, or if such affidavit is made before a judge of the court of common pleas, then at the term of such court to be held next after the expiration of the said six weeks, specifying the time and place when and where such term shall be held, why an assignment of the said insolvent's estate should not be made and the said insolvent discharged according to this act ; at which day or term so appointed, or on any other subsequent day or term that the chancellor or justice, or court of common pleas may judge proper to appoint, and if no sufficient cause to the contrary appears, and the chancellor, justice of the supreme court or the said court of common pleas shall be satisfied that the said insolvent is justly and truly indebted to the subscribing petitioners in the sums by them respectively mentioned, and that such sums amount in the aggregate to three-fourths of the debts due by such insolvent, and that such insolvent has conformed in all things to the matters required of him by this act, the said chancellor, justice of the supreme court or the said court of common pleas shall direct a grant or assignment of all such insolvent's estate, both in law and equity, in possession, reversion or remainder to be made by such insolvent to the person or persons nominated by the petitioners or a majority of

If no cause be shown, the judge or court to direct an assignment :

them in respect to the amount of their said demands on the said insolvent, except such articles of wearing apparel and bedding as in the opinion of the chancellor, justice of the supreme court or court of common pleas aforesaid shall be reasonable and necessary for such insolvent and for the family of such insolvent to retain, and also the arms and accoutrements of such insolvent, if any there are mentioned in such inventory required by law to be provided by any citizen enrolled in the militia.

Articles ex-
cepted.

VI. *And be it further enacted,* That it shall and may be lawful for the chancellor, justice or court of common pleas before whom such petition shall be depending, upon application by any creditor of such insolvent, to examine such insolvent, his wife, the petitioning creditors, and any other person and persons upon oath, touching every matter relative to the estate, debts and credits of the said insolvent, and for that purpose to issue a warrant under the hand and seal of such chancellor or justice, or of a judge of the said court of common pleas; requiring any person to appear and answer before the said chancellor, justice or court of common pleas, touching the matters by this act directed to be heard by them; and every person who being served with such warrant shall without reasonable cause refuse or neglect to appear, or appearing shall refuse to answer upon oath touching the matters aforesaid, shall forfeit the sum of one hundred and twenty-five dollars, to be recovered with costs of suit by action of debt by any person who will sue for the same, and shall also be committed to prison by warrant or order of the said chancellor, justice or court, there to remain without bail until he shall submit to answer upon oath as aforesaid.

Any person
may be exam-
ined and a
warrant issu-
ed to compel
his appear-
ance:

Penalty for
refusal to ap-
pear or an-
swer.

VII. *And be it further enacted,* That upon such insolvent producing a certificate under the hand and seal or the hands and seals of the assignee or assignees, executed in the presence of two witnesses, that such insolvent has granted, conveyed, assigned and delivered for the use of his creditors, all his estate real and personal both in law and equity, in possession, reversion or remainder, except as aforesaid, and all the books, vouchers and securities relating to the same, the chancellor, justice or court of common pleas shall discharge such insolvent from all such debts due at the time of the assignment or contracted for before that time, though payable afterwards, and also if in prison, from his imprisonment; which discharge or the record thereof, shall be a sufficient warrant and authority to the sheriff or gaoler for setting such prisoner at large, and the said discharge or the record thereof, or transcript thereof duly authenticated, shall be also conclusive evidence in all courts within this state of the facts therein contained.

Discharge of
insolvent
when to be
granted:

Its effect.

Now creditors may procure an assignment of the estate of a debtor imprisoned sixty days for a debt of 25 dollars or upwards.

VIII. *And be it further enacted,* That it shall and may be lawful for any creditor of any person who hath or shall have been actually imprisoned for sixty days and upwards upon execution in any civil action, to apply in person or by attorney if the principal resides without this state as aforesaid, to the chancellor or any of the justices of the supreme court for relief, in case such creditor or the said attorney shall be apprehensive that the estate or effects of such debtor will be wasted or embezzled, and upon such application, and an affidavit being made by such creditor before a master in chancery or justice of the supreme court, or in case of the residence of such creditor without this state, then in the manner herein before directed, that such person is justly indebted to such creditor in a certain sum of money then due and to be specified in the said affidavit, and not less than twenty-five dollars, and that such debtor is in prison on execution issued against him in some civil action, and has been so imprisoned for sixty days and upwards, the said chancellor or justice shall order a publication to be made in the manner herein before directed, for the creditors of such debtor to appear before him at a certain day in the said order to be specified, and not less than eight weeks after the publication of such order, to shew cause, if any they have, why an assignment should not be made of the said debtor's estate for the benefit of all his creditors; and upon that day, or at such subsequent days and times as the said chancellor or justice may appoint, if so many of the creditors of such insolvent as he shall be satisfied have debts owing to them to the amount of three-fourths in value of all the debts owing by such insolvent, shall request an assignment to be made of the estate of such insolvent as aforesaid, and no good cause appears to the contrary, it shall be lawful for the said chancellor or justice to direct such assignment to be made in like manner as if the parties had appeared before him in consequence of a petition as aforesaid, each of the said creditors first making an affidavit in the manner herein before directed, that the sum demanded by such creditor is justly due to him or will become due to him at some future time to be specified in such affidavit, and that he, or any other person to his use, hath not received from such insolvent or any other person any payment of part of his demand against such insolvent in money, or by sale, conveyance, assignment or delivery of any lands, tenements, hereditaments, goods, chattels or any thing in action, or any gift or reward whatsoever, upon any express or secret or implied contract, promise, trust or confidence, that he should consent to or request such assignment; and if such insolvent shall make such assignment in ten days thereafter

and shall conform to the directions of this act with respect to petitioning debtors, such insolvent shall be thereupon discharged in like manner as if he had petitioned for his discharge in conjunction with the creditors pursuant to this act; but if such insolvent shall refuse or neglect to make such assignment as aforesaid, the said chancellor or justice shall execute an assignment of such insolvent's estate both in law and equity, in possession, reversion or remainder, to such person or persons as a majority of the creditors of such insolvent in respect to the amount of their demands appearing to him shall nominate, and with the like exceptions as are herein before mentioned, which assignment shall be equally valid, and the assignees shall have the like estate and power and be subject to the like duties as if the same had been executed by such insolvent, and shall vest in such assignees the whole of the estate which belonged to the said insolvent on the day of the first publication of the order so made as aforesaid.

IX. *And be it further enacted*, That if the said insolvent shall so as aforesaid refuse or neglect to make an assignment of his estate, such insolvent shall not be discharged from imprisonment by virtue of this act, unless so many of his creditors as shall have debts owing to them to the amount of three-fourths in value of all the debts owing by such insolvent, shall petition the said chancellor or justice for his discharge, or unless such insolvent shall have delivered such inventory and account and taken such oath as is herein before prescribed, and so many of his creditors as aforesaid have accepted a dividend under such assignment.

Such insolvent not to be discharged if he refuses to make an assignment, unless, &c.

X. *And be it further enacted*, That in all cases where executors or administrators shall deem it proper to become petitioning creditors for any insolvent debtor, such executors or administrators may present a petition to the chancellor of this state stating the reasons which induced them to think it advisable for them respectively to become petitioning creditors as aforesaid, whereupon the said chancellor shall as soon as he may deem it convenient examine the allegations and reasons contained in such petition in a summary manner, and if he shall thereupon be of opinion that it will not be disadvantageous to the persons interested in the personal estate of such testator or intestate, that the said executors or administrators should become petitioning creditors as aforesaid, then and in every such case he shall cause an entry of such opinion to be made in the minutes of the court of chancery, and thereupon the said executors or administrators shall be fully authorized to become petitioning creditors as aforesaid, and shall be only chargeable with such sum of money as

In what manner executors and administrators become petitioning creditors.

shall come to their hands from the estate of the insolvent.

Insolvent being discharged and sued, may plead the general issue.

XI. *And be it further enacted*, That any such insolvent having been discharged in conformity to this act, if prosecuted for any debt or contract before mentioned, or if any other person be sued for any matter or thing done by virtue of this act, it shall be lawful for such person to plead the general issue and give the special matter in evidence.

Insolvent guilty of perjury or fraud, his discharge to be void.

XII. *And be it further enacted*, That in case any such insolvent shall be guilty of perjury by concealing any part of his estate or effects, or shall after the assignment of his estate by virtue of this act receive any debt due to him before such assignment, or if he shall secrete any part of his estate or any books or writings relative thereto with intent to defraud his creditors, or shall fraudulently conceal any of his creditors or the amount of the sum due any of them, or shall procure any person to become a petitioning creditor for any sum not *bona fide* due from him to such creditor, or for any larger sum than is really and *bona fide* due from such insolvent to such creditor, to make such sum in value as is required by this act as aforesaid, then and in every such case the discharge of the said insolvent under this act shall be void, and his person and estate or effects shall be subject to the payment of all his former debts, as well to his petitioning creditors as others, the said discharge to the contrary notwithstanding.

Penalty on persons concealing insolvent's estate.

XIII. *And be it further enacted*, That any person who shall have accepted of any trust for any insolvent or shall wilfully conceal or protect any estate real or personal of any insolvent from the assignee or assignees of such insolvent, and shall not in fifty days after notice of such assignment being published in the newspaper printed by the printer to this state and one other of the public newspapers printed in this state, fully discover and disclose such trust and estate to the said assignee or assignees, he shall forfeit the sum of two hundred and fifty dollars and double the value of the estate so concealed, to be recovered with costs by action of debt in any court of record having cognizance thereof, in the name or names of the said assignee or assignees for the use and benefit of the creditors of such insolvent.

Persons swearing to sums not due or to greater sums than are due, to forfeit double the value.

XIV. *And be it further enacted*, That if any person shall swear before a master in chancery, justice or judge as aforesaid, that any sum of money is due to him from any such insolvent, which sum of money is not really due, or shall swear that more is due than is really due, knowing the same to be not due, and that such oath is false, such person shall be liable to pay double the sum so sworn to be due as aforesaid, to be recovered by action of debt in any court having cognizance thereof, in the name or names of the assignee or assignees of such insolvent's

estate, and to be divided among all the creditors of such insolvent in proportion to their demands against such insolvent's estate.

XV. *And be it further enacted,* That for the more full discovery of the estate of such insolvent, the chancellor or justice of the supreme court, or judge of the court of common pleas, at the request of the assignees, the survivors or survivor of them, shall have at any time after such assignment as aforesaid, full power and they are hereby required to summon and examine on oath such insolvent, his wife, and every other person whomsoever known or suspected to detain any part of the said insolvent's estate, or to be indebted to it, and in case any person on such summons shall refuse to attend, having no reasonable excuse, or shall refuse to be sworn, then it shall be lawful for the said chancellor or any of the justices of the supreme court, or such judge of the court of common pleas to commit the person so refusing to gaol, until he shall submit to be examined concerning what he may know relating to such estate; and if any such person shall wilfully and knowingly affirm or swear falsely, the person so offending shall be liable to the same pains and penalties as those who are convicted of wilful and corrupt perjury.

Judge or court may examine on oath persons suspected of concealment.

Persons refusing to appear or be sworn, to be imprisoned.

Such persons swearing falsely, guilty of perjury.

XVI. *And be it further enacted,* That every such insolvent who shall before the delivery of such petition have become bail in any cause on account of which he has reason to think judgment may be had against him, and shall make oath that at the time he so became bail he had a clear estate sufficient to answer any demand that could with any probability be made upon him as bail, may add to the account of the creditors and the monies owing by him before directed to be given, an account of the manner of becoming bail, and annex such a sum as he shall imagine he will be liable to pay on that account; and then the assignees shall reserve in their hands for the space of one year and a half, such a dividend as a creditor for the like sum would have a right to receive, and after judgment obtained against any such insolvent the person obtaining the same shall be considered in every respect as another creditor whose debt was due before the delivery of the petition; but if in the space of one year and a half after the petition is delivered no judgment shall be obtained against such insolvent, the monies so reserved shall be divided among the other creditors in the same manner as the rest of such insolvent's estate, and such insolvent shall be discharged from all obligations as bail in the same manner as if the sum so annexed to the account of his creditors was paid; and if judgment shall be obtained against such insolvent as bail, for any sum within one year and a half after the petition is delivered and after the division of the produce of his estate among

Insolvent being bail, may add to the account the sum he deems himself liable for.

Assignees to reserve a dividend for the plaintiff for eighteen months:

If by that time no judgment be obtained, the money reserved to be divided among the creditors.

If insolvent
omit to add
such sum, the
plaintiff to
recover a di-
vidend.

Provide.

Persons
whose debts
are not due,
entitled to a
dividend on a
rebate of in-
terest.

Powers and
duty of the
assignees.

his creditors, and the said insolvent shall have omitted, either wholly or in part, to annex the said sum to the account delivered, the person obtaining such judgment shall recover against the said insolvent either for the whole or part omitted as the case shall happen to be, so much as the other creditors of the said insolvent ought to have received for a like just debt and no more; *Provided always*, That the sum for which judgment is obtained against such insolvent being added to the account of his creditors and of the monies owing to them before directed to be given, the debts owing by him to the petitioning creditors shall still appear to have been three-fourths of all that was owing by the said insolvent.

XVII. *And be it further enacted*, That all persons who have given credit to such insolvent on a valuable consideration for any sum of money or other matter, which is or shall not be due or payable at or before the time of the delivery of the petition, shall be admitted as creditors whose debts are then due, and shall receive a dividend of such insolvent's estate in the same proportion as the other creditors, deducting thereout only a rebate of interest at the rate of seven per cent for what shall be received on such debts, unless such debts shall be payable with interest, to be computed from the actual payment thereof to the time they would have been due.

XVIII. *And be it further enacted*, That such assignee or assignees shall have power to dispose of all the real and personal estate of such debtor which shall be assigned to him or them, or which ought by virtue of this act to be assigned to him or them, and to convert the same into money, to execute good and sufficient deeds for such real and personal estate, to redeem all mortgages and conditional contracts, and satisfy all judgments, and to recover in his or their name or names all such real and personal estate of such insolvent, and all deeds and books of accounts and papers respecting the same, and shall have full power to refer to arbitration, settle or compound with any person indebted to the insolvent in such manner as shall from time to time appear to such assignee or assignees most advantageous to the creditors of such insolvent, and shall within the space of one year proceed to make a division of all the money which shall have come to his or their hands of such estate, first giving three months notice of the time and place of making such division by advertising the same in the newspaper printed by the printer to this state, and in one other of the public newspapers printed in this state, and if the whole be not then settled, shall within the space of one year thereafter make a second division of such monies as may come to his or their hands after the first division, and so from year to year, until a final settlement thereof and a just and equal division of the whole be made;

and if on settling the estate of the insolvent, a surplus should remain in their possession after discharging the debts of the said insolvent, the same shall be paid to the said insolvent or his legal representatives.

XIX. *And be it further enacted*, That where it shall appear to the assignee or assignees of any insolvent debtor, who hath been or shall be discharged under this act, that there hath been mutual credit given by the said insolvent and any other person, or that mutual debts subsisted between the said insolvent and any other person, before such insolvent presented his petition praying the benefit of this act, the assignee or assignees of such insolvent shall state the account between them, and one debt may be set against another, and what shall appear to be due on the balance of such account and on setting such debts against one another, and no more, shall be claimed or paid on either side respectively.

In case of mutual dealings assignee to admit of set-off.

XX. *And be it further enacted*, That the assignees, or the survivors or survivor of them, shall at least one month before a division be made, appoint a day by advertising the same in one or more of the public newspapers for a general meeting of all such creditors as shall choose to attend, to examine and ascertain the debts due to each creditor, and in case of any controversy relating to such debts, it shall be determined in the following manner, that is to say: The assignees shall nominate two referees, not being creditors of the insolvent, and the creditor whose debt is in controversy shall nominate two others, and their names shall be separately written on four pieces of paper, as nearly of the same size as possible, which shall be rolled up in the same manner and put into a box, and from thence one of the assignees shall draw out three of the said pieces of paper, and the persons whose names are so drawn shall finally settle such controversy, and if any referee so appointed shall refuse, or be incapable of acting in a reasonable time, a new choice shall be made in the same manner; and in case any such creditor shall refuse to nominate referees on his part, the assignees are hereby empowered to nominate them for him.

Assignees to notify creditors before a dividend.

How controversies relating to debts due to creditors to be settled.

XXI. *And be it further enacted*, That the assignee or assignees shall before he or they enter upon the execution of the trust committed to him or them by virtue of this act, take an oath to be administered by a master in chancery, a justice of the supreme court or any of the judges of the court of common pleas aforesaid, well and faithfully to manage the insolvent's estate, and keep and render a true account of all that shall come to his or their hands of the same, and for that purpose he or they shall keep regular books of account to which every creditor at all reasonable times may have recourse, and for the care and trouble incumbent on the assignee or assignees, he or they

Assignee to take an oath.

His allowance

Costs of suit, gaol fees and expenses of the proceedings to be first paid.

No preference of debts due by specialty.

No suit in equity to be brought without consent of creditors.

Creditor not proving his debt, not entitled to a dividend :

May prove his debt before a second dividend, and receive his share.

Insolvent to be allowed five per cent if the estate yields 70 cents in the dollar.

This act not to affect landlords' right to distrain.

Recorder of New-York a

shall be allowed out of the insolvent's estate, such a consideration as the petitioners or a major part of them shall agree and fix upon ; and that all costs of suit, prison and gaol fees, and charges of proceedings under this act to obtain the discharge of the insolvent, shall be first paid, and then deducting all such costs, charges and expenses as shall be necessarily laid out and expended by the assignee or assignees, together with his or their commissions for his or their care and trouble therein, the residue shall be divided equally among the creditors, in which division no preference shall be given to debts due by specialty.

XXII. *And be it further enacted*, That no suit in equity shall be commenced by any assignee without the consent of the majority of the petitioners or creditors who consented to the assignment with respect to the amount of their debts as aforesaid, at a meeting held for that purpose ; and if any creditor shall neglect or refuse to give notice of and prove his debt within one year and an half after the assignment and a division of the whole estate be made, such creditor shall not be entitled to a dividend, and the whole money shall be divided by the assignees among the other creditors ; but in case the whole of such insolvent's estate shall not be divided and settled by the time by this act appointed for the first division, and such creditor shall prove his debt before the time appointed for the second division, then such creditor shall before a second division be made among the other creditors, have his said dividend or so much money as he would have been entitled to on the first division, had his debt been then proved ; but no creditor shall be admitted to prove his debt in order to entitle himself to a share in the insolvent's estate after a second division, but shall by this act be debarred from any share thereof.

XXIII. *And be it further enacted*, That every insolvent who shall be discharged by virtue of this act, and in all things conform to the directions thereof, shall be allowed the sum of five per cent on the nett produce of all his estate that shall be recovered or received by the said assignee or assignees, to be paid to him by such assignee or assignees, in case the nett produce of the said estate, after such allowance made, shall be sufficient to pay the creditors of such insolvent who shall prove their debts in the manner directed by this act, the sum of seventy cents in the dollar, and so as the said five per cent shall not amount in the whole to above the sum of five hundred dollars.

XXIV. *And be it further enacted*, That nothing in this act contained shall be construed to deprive landlords of the right of distraining for or securing their rents, which by law they had before the making of this act.

XXV. *And be it further enacted*, That the recorder of the city of New-York, shall be *ex officio* a commissioner

equally authorized and required with a judge of the supreme court, to do and execute the powers and trusts which such judge is authorized and required to do and execute by virtue of this act; and that whenever upon the application of an insolvent debtor or his creditors, day may be given by a judge of the supreme court or the chancellor to attend in the said city of New-York, in case of the death, sickness or absence of the chancellor or judge, the said commissioner shall discharge the duties required by this act in the like manner as might have been done by the said chancellor or judge.

commissioner
under this
act.

C H A P. CXXXIII.

An ACT concerning the Court of Chancery and the Proceedings therein.

Passed 3d April, 1801.

I. **B**E it enacted by the People of the State of New-York, represented in Senate and Assembly, That there shall be three seals of the court of chancery, and the descriptions of the same in writing deposited and recorded in the office of the secretary of this state, shall there remain as public records thereof, and that all commissions, writs, processes and other proceedings which according to the course and practice of the said court, since the sixteenth day of March, one thousand seven hundred and seventy-eight, have issued under the seal of the said court shall continue to be so issued, and shall be equally valid when issued under either of the said seals.

Three seals
of the court
of chancery.

II. *And be it further enacted,* That the chancellor shall cause the said seals to be deposited at such places as he shall deem most convenient for the administration of justice.

Where de-
posited.

III. *And be it further enacted,* That it shall not be necessary to enroll any decree or dismissal, to be made or given in the said court of chancery, but that in all cases the clerks of the said court shall, immediately after any decree or dismissal is pronounced, deliver the bill and answer or answers and other pleadings, if there be any in such cause, to the register of the said court, who shall annex them together and file the same in his office, and the register shall thereupon draw up and engross the decree or dismissal in the same cause with such reports and decretal orders as may have been made therein, but without any recital of the bill, answer or pleadings, and shall annex the same after it is signed by himself and the chancellor, to the said bill, answer and pleadings in the same cause, which shall be of the same force and effect as if such decree or dismissal had been enrolled.

Decrees not
to be enrolled
but annexed
to the plead-
ings.

Proceedings may be on paper to be before the chancellor.

IV. *And be it further enacted.* That it shall be lawful to use paper instead of parchment in all proceedings in the same court, except as to the processes of the same, and that all proceedings in the same court, which have heretofore been supposed to be before the people of this state, shall hereafter be before the chancellor.

Where there are two or more plaintiffs or defendants, suit not to abate by the death of some of them if the cause survives

V. *And be it further enacted,* That if in any action in the said court of chancery there be two or more plaintiffs or defendants, and one or more of them shall die, if the cause of such action shall survive to the surviving plaintiff or plaintiffs, or against the surviving defendant or defendants, such action shall not be thereby abated, but such death being suggested and shown by affidavit or otherwise to the satisfaction of the court, such action shall proceed at the suit of the surviving plaintiff or plaintiffs against the surviving defendant or defendants.

If the cause does not survive, the suit only to abate as to the person deceased.

VI. *And be it further enacted,* That in every action in the said court in which there shall be two or more plaintiffs or defendants and any one of them shall die, and the cause of action shall not survive but other persons shall become parties in interest, such action shall by reason of such death be abated only with respect to the person deceased, and the surviving parties may proceed without reviving the suit against the representatives of the deceased or any other person who has become interested therein, but no order or decree of the court in such cause shall bind any person who is not a party thereto; and in case the plaintiff or plaintiffs shall choose to make the representatives of the deceased person or others who may become interested by the death of such person parties to such suit, no bill of revivor or *subpena ad revivendum* shall be necessary, but the court shall and may by rule or order, as often as there shall be occasion, direct the suit to stand revived, which rule or order shall be served on the adverse clerk, and unless the representatives of such deceased person or others who may become interested by the death of such person, shall within eighty days after such service as aforesaid appear and put in their answer, or signify their disclaimer of the suit and the matters in controversy therein, the plaintiff or plaintiffs may cause their appearance to be entered, and in such case the answer of the deceased person shall be deemed and taken as and for the answer of such representatives or other persons interested by the death of such person; *And further,* that in case any plaintiff in any such suit wherein the cause of action shall not survive shall die pending the same, his lawful representatives or any other person interested by his death may on affidavit thereof and on motion in open court be inserted as complainant in the suit, and be permitted to amend the bill as his interest may require, to which amendment the defendant shall be compellable to answer, and the action

shall proceed to issue and trial as in ordinary cases, and in case any such person shall not in eighty days after such death of the plaintiff cause himself to be entered as complainant as aforesaid, then the surviving plaintiff may insert his name as a defendant in the suit and proceed as before directed in cases where the representatives of a deceased defendant are made parties.

VII. *And be it further enacted*, That no *subpoena* or any process for appearance shall issue out of the court of chancery until after the bill is filed with the proper officer in the said court, except in cases of bills for injunctions to stay waste or to stay suits at law, and that no injunction shall be issued in any case until the bill is filed as aforesaid; *And further*, That no copy, abstract or tenor of any bill in equity shall go with the *dedimus* or commission for taking the defendant's answer.

No process for appearance till bill filed except in case of injunction bills:

No injunction till bill filed:

No copy of bill to go with a *dedimus*.

If defendant does not appear, or absents himself, the court to order him to appear by a certain day.

VIII. *And be it further enacted*, That if in any suit in the said court any defendant against whom any process shall issue, shall not cause his appearance to be entered upon such process within such time and in such manner as according to the rules of the said court the same ought to have been entered in case such process had been duly served, or if any such defendant after service of any *subpoena* or other process so issued out of the said court, shall neglect or refuse to enter his appearance within such time and in such manner as is directed by the rules of the said court, and affidavit shall be made to the satisfaction of the said court, that the said defendant is out of this state, or doth conceal himself therein, the said court shall and may make an order directing such defendant to appear at a certain day therein to be mentioned, and a copy of such order shall within twenty days be inserted in one or more of the public newspapers printed in this state, and be published therein eight weeks successively, at least once in each of the said weeks, and if the defendant do not appear within the time limited by the said order or within such further time as the court shall appoint, then on proof to the satisfaction of the court that such order was duly published as aforesaid, the said court may order the plaintiff's bill to be taken *pro confesso*, and make such decree thereupon as shall be thought just, and may thereupon issue process to compel the performance of such decree, either by an immediate sequestration of the real and personal estate and effects of the defendant so absent as aforesaid, or such part thereof as may be sufficient to satisfy the demands of the plaintiff in the said suit, or by causing possession of the estate or effects demanded by the bill to be delivered to the plaintiff, and the said court of chancery may likewise order such plaintiff to be paid and satisfied his demands out of the estate or effects so sequestered according to the true intent and meaning of such decree, such plaintiff first

Such order to be published.

If not obeyed the bill to be taken *pro confesso*.

as the said court shall approve, and together with the interest arising therefrom shall remain under the direction of the said court as a security to the mortgagee or mortgagees for such demands or instalments, and after the said demands or instalments shall become due and as the same shall become due, the said court shall cause such monies so put at interest to be applied in discharge thereof, and the overplus, if any there be, shall be paid to such mortgagor or mortgagors, his, her or their legal representatives, upon his, her or their application to the court for the same.

Proceedings
in such cases
against mort-
gagors when
and on what
terms to be
stayed.

XV. *Provided also, and it is hereby further enacted,* That if the mortgagor or mortgagors shall at any time before a sale made in pursuance of such decree, cause an appearance to be entered in such court, and shall pay such costs to the mortgagee or mortgagees as the said court shall think reasonable, that then the said court shall cause the sale of the said mortgaged premises to be stayed, and such proceedings may thereupon be had in the cause as if an appearance had been entered within such time and in such manner as according to the rules of the said court the same ought to have been done in case the first process in the suit had been duly served.

Examiners to
administer
oaths.

XVI. *And be it further enacted,* That it shall be lawful for the several examiners in the court of chancery, and they are hereby empowered to administer oaths to witnesses, and also to take affidavits to be read in the said court.

Causes how
brought on to
hearing.

XVII. *And be it further enacted,* That after the first Monday of July next no *subpoena* to hear judgment shall issue, but that all causes shall be brought on to hearing under such rules and orders as the chancellor may from time to time prescribe.

C H A P. CXXXV.

An ACT relative to the Court of Exchequer.

Passed 3d April, 1801.

Junior justice
of the su-
preme court
to hold a
court of Ex-
chequer.

I. **B**E it enacted by the People of the State of New-York, represented in Senate and Assembly, That the junior justice or in his absence any other of the puisne justices of the supreme court, shall during every term of the said court or such part thereof as may be necessary, at or near the place of holding the said supreme court, hold a court to be called the court of exchequer in the supreme court, which shall have power to hear and determine all causes, matters and things concerning forfeitures, whether for recognizances or for other cause, fines, issues, amerciaments and debts due or to become due to the

The power &
duties of such
court.

people of this state according to law and the course of the exchequer, and that it shall be lawful for such court to cause due process of law to be issued for levying the same, and all sheriffs, coroners and other officers to account for all monies received for the same and to audit and settle such accounts and cause the same to be paid, and also upon good cause shown to remit any fine upon any juror or other officer of any other court for default of attending the same, or any forfeiture of any recognizance or any part of such fine or recognizance and to discharge such recognizance according to equity and justice; *And further*, That it shall be lawful for such court in any case of difficulty to adjourn the same and deliver the record thereof into the supreme court where the same shall be heard and determined, and thereupon sent back to the said court of exchequer where execution thereof shall be done according to law.

May refer cases of difficulty into the supreme court

II. *And be it further enacted*, That the justices of the supreme court, as often as may be necessary, shall by rule or order to be entered in the minutes of the said court, appoint, and the chief justice under his hand and the seal of the said court commission, an experienced and proper person to be clerk of the said court of exchequer, who shall hold his office during the pleasure of the said justices, and such clerk shall make and enter all minutes and records and issue all process as shall be directed by the said court, and shall receive and be accountable for all monies paid into the said court, and annually on the first day of January term shall make a just and true account upon oath of all monies paid into the said court and of all expences by him paid for stationary and other necessaries for his office, and produce the same to the said court to be audited and allowed, and within twenty days thereafter shall deliver a true copy of such account so allowed to the treasurer of this state and pay to him the amount thereof, after deducting his salary and the sums so allowed for necessaries, upon pain of forfeiting his office besides being answerable for the monies so received.

Justices of the supreme court to appoint a clerk of the exchequer.

His duty.

Penalty for neglect.

III. *And be it further enacted*, That as often as a clerk of the said court of exchequer shall be appointed, he shall before he enter upon the discharge of any of the duties directed to be performed by him in and by this act, give a bond with two sureties, to be approved by one of the justices of the supreme court, to the people of this state, in the sum of five thousand dollars, conditioned for the faithful performance of the duties of his office, and shall file such bond in the office of the clerk of the supreme court.

The clerk to give a bond with sureties for the faithful execution of his office.

IV. *And be it further enacted*, That the present seal shall continue to be the seal of the said court, and the description thereof deposited and recorded in the office of the secretary of this state shall there remain as a public re-

Seal of the court.

Process to be sealed there-with & signed by the court.

cord of the same, and that the process of the said court of exchequer shall be sealed with the said seal and signed by the said clerk, and returnable "*Before one of our justices of our supreme court in our court of exchequer, (on such day as the said court shall next be held,) at the city of Albany, (or, New-York,*" as the case may be.)

No fee or reward to the justices or clerk.

V. *And be it further enacted,* That neither of the justices who may hold such court nor the said clerk shall take or receive any fee or reward for any services by them to be performed therein.

Duty of clerks of courts of record as to the return of fines, &c. into the exchequer.

VI. *And be it further enacted,* That the clerks of the several courts of record in this state shall annually on the first day of October term, make and deliver into the said court of exchequer a just and true account and estreat of all fines, forfeitures, issues and amerciaments imposed or adjudged, and of all recognizances forfeited before the first day of September preceding the first day of the said October term in the respective courts of which they are clerks, together with the said recognizances, noting in every such account and estreat where any such fines, forfeitures, issues or amerciaments have been paid or the person committed for the same, to whom such payment or commitment was made, and what process has been issued and to what officer, upon pain that every clerk who shall neglect his duty therein shall forfeit his office and become answerable for all such fines, forfeitures, issues and amerciaments, and the amount of all such recognizances as such clerk shall neglect to give an account of and estreat and deliver as aforesaid.

Penalty for neglect.

VII. *And be it further enacted,* That every sheriff and other officer to whom any process out of the said court of exchequer shall be directed and delivered, shall upon demand show the same and without any fee or reward deliver a copy thereof to the debtor or person against whom the same shall issue, and upon the receipt or levying of the money therein mentioned acquit the debtor thereof and account for the same at his next account, and if any sheriff or other officer shall refuse so to do and be thereof convicted, he shall render to the party grieved treble damages, and be further punished by fine at the discretion of the court in which he shall be convicted.

Sheriffs on process out of the exchequer to deliver copy thereof on demand & acquit debtors for money received.

Penalty on refusal.

Sheriff and coroners and other officers to account on oath for all fines, &c.

VIII. *And be it further enacted,* That all sheriffs, coroners and other officers who shall have received or have become liable for any such fines, forfeitures, issues or amerciaments, shall annually on the first day of April or October term render a just and true account thereof on oath to the said court of exchequer, and pay the balance, if any, found due thereon to the clerk of the said court, which account shall be audited and settled by the said court, and on payment thereof by any sheriff, coroner or other officer the said court shall grant a *quictus* or dis-

And pay the balance.

charge for the same under the seal of the said court ; and if any sheriff, coroner or other officer shall not pay such balance within twenty days after the auditing of his account, execution shall be issued against him for the same, and if any such sheriff, coroner or other officer shall refuse or neglect to render such account such officer so neglecting or refusing shall be liable to pay all such sums of money as shall or might have been received by him for any such fines, forfeitures, issues and amerciaments, and all such fines forfeitures, issues and amerciaments as shall have been imposed or adjudged against such officer so neglecting or refusing in any court of record in this state, and execution shall thereupon be issued against such officer for the same ; and if on auditing the account of any such sheriff, coroner or other officer, a balance shall be found in his favour, he shall be entitled to receive the same out of the treasury of the state on a certificate under the hand of the judge and under the seal of the said court ; And further, Where a fine imposed on a grand juror, petit juror or any officer for neglecting or refusing to attend a court, shall have been levied by the sheriff and by him paid to the clerk of the said court, and shall afterwards on the petition of the defendant be remitted by the said court in whole or in part, such defendant shall on a like certificate be entitled to receive the sum so remitted out of the treasury of the state.

On default of payment execution to issue against them.

Penalty on neglecting to account.

If on accounting a balance be due to such sheriff, &c. he shall be entitled to receive the same out of the treasury. A fine imposed in certain cases if remitted, also to be repaid out of the treasury.

IX. *And be it further enacted*, That all executions in the said court of exchequer for levying a fine imposed on any grand juror, petit juror or other officer for refusing or neglecting to attend a court, shall be against the goods of the defendant, and where there shall be more than one such defendant in any county, then instead of an execution against each defendant it shall be sufficient if the names of the several defendants and opposite thereto the debts to be made of their goods respectively, shall be written on a schedule to be annexed to an execution commanding the sheriff or other officer that of the respective goods and chattels of the several defendants named in such schedule, he cause to be made the several debts therein specified opposite to the names of the said defendants respectively ; and the said execution shall contain a clause commanding the sheriff or other officer that at the time of levying the fines he notify the defendants severally, that if they have sufficient matter to show for remitting the fines levied from them respectively, that they appear in the said court of exchequer on the first day of the next ensuing term of the supreme court, or at the first circuit court to be held after such notice in the county where such defendants shall reside, to show such matter ; and the judges of the supreme court shall severally certify into the court of exchequer the allegations and proofs of the defendants

Form of execution for fines.

Defendants to be warned to show cause for remitting their fines.

Form of execution in other cases.

made before them in that behalf at the circuit courts held by them respectively, and that all other executions to be issued by the said court shall be against the body, lands and goods of the defendants, and shall command the officer to whom the said executions shall be directed to cause to be made of the goods and chattels of such defendant in his county the sum of money therein specified, and if sufficient goods and chattels of such defendant cannot be found in his county, then that he cause such sum of money to be made of the lands and tenements in his county whereof such defendant was seised on the the day such sum of money became due, specifying the same in such execution, or at any time afterwards in whose hands soever the same may be, and also that he take the body of such defendant and him in prison safely keep until he shall satisfy such sum to the people of this state; but if sufficient goods and chattels of such defendant shall be found, then that his land be not sold nor his body taken in execution for the same, and when any such execution shall be issued against any sheriff, coroner or other officer while in office, or against any heir, executor or administrator, such execution shall not be against their bodies but only against the lands, goods and chattels of such sheriff, coroner or other officer, or of the ancestor, testator or intestate of such heir, executor or administrator.

Persons employed by the executive to demand fugitives from justice to be paid for their service such sum as the court of exchequer may allow.

X. *And be it further enacted,* That in all cases where the executive of this state in pursuance of the constitution of the United States or any law of the United States, hath or hereafter shall demand from the executive authority of any state in the union any person as a fugitive from justice, it shall and may be lawful for the court of exchequer to audit the account of the person who hath been or hereafter may be deputed or employed by the executive of this state to claim and demand such fugitive, and the said person so deputed and employed shall be entitled to receive out of the treasury of this state the sum which the judge of the said court of exchequer shall under his hand and seal certify to be reasonably due to him for such service.

C H A P. CXXXVI.

An ACT for the Relief of Special Bail.

Passed 4th April, 1801.

No suit to be commenced upon a recognizance of bail after the day hereinafter mentioned until the pro-

I. **B**E it enacted by the People of the State of New-York, represented in Senate and Assembly, That from and after the first Tuesday in November next, no suit shall be commenced upon any recognizance of bail in any civil action, until a writ of *capias ad satisfaciendum* or *testatum*

capias ad satisfaciendum shall have issued against the defendant in the original action, directed to the sheriff of the county in which such defendant was arrested or taken, and such sheriff shall have returned thereon that the said defendant was not found within his county; and if any action after the said first Tuesday of November next, shall be commenced upon such recognizance, and it shall not appear on the trial thereof, that a writ of *capias ad satisfaciendum* or of *testatum capias ad satisfaciendum* was issued and returned in the manner herein before mentioned, a verdict shall be found for the defendant; And further, That it shall be the duty of the sheriff to endeavour to serve such writ upon the defendant, any directions which he may receive from the plaintiff therein or his attorney, to the contrary notwithstanding.

cesses herein directed shall have been issued and returned.

Duty of the sheriff in serving such process.

II. And be it further enacted, That in all cases where proceedings shall be had by *scire facias* after the said first Tuesday of November next, upon any recognizance of bail in civil actions, it shall be necessary in order to charge the defendant therein to serve the said writ of *scire facias* upon the said defendant, either by reading the same to the defendant and delivering a copy of the said writ of *scire facias* subscribed by the officer to whom the same shall be directed, or by his deputies, at the dwelling house or at the usual place of abode of the defendant, or in case such defendant shall have removed out of this state, at his last usual place of residence within this state, at least six days previous to the return thereof, and the manner of such service shall be indorsed on such writ by the returning officer thereof.

Proceedings in order to charge the defendant upon recognizance of bail.

The manner of such service to be indorsed on such writ by the returning officer.

C H A P. CXXXVII.

An ACT to regulate the Practice of Physic and Surgery in this State.

Passed 4th April, 1801.

I. **B**E it enacted by the People of the State of New-York, represented in Senate and Assembly, That no person who on or before the twenty-third day of March, in the year one thousand seven hundred and ninety-seven, practised physic or surgery or administered medicine or performed surgical operations within this state, shall continue so to do, unless, in conformity to the regulations heretofore made, he shall on or before the first day of October in the year aforesaid have produced satisfactory evidence to the chancellor, one of the judges of the supreme court, a master in chancery or one of the judges of the courts of common pleas within this state, that he has practised physic or surgery, or both, as the case may be, for the term

No person who practised physic or surgery before a certain day to continue such practice without having obtained and filed a certificate of previous practice or study, &c.

of two years next preceding the said first day of October, or shall in manner aforesaid have produced satisfactory evidence that he has studied physic or surgery, or both, as the case may be, with one or more reputable physicians or surgeons for the term of two years, and shall have obtained from the magistrate or officer before whom such evidence was adduced, a certificate under his hand and seal that such satisfactory evidence has been produced to him, and shall have filed such certificate in the office of the clerk of the county in which he then resided; and every person who shall not have obtained and filed such certificate and shall hereafter practise physic or surgery, administer medicine or perform surgical operations, shall forfeit and pay for every offence the sum of twenty-five dollars, to be recovered by action of debt with costs of suit in any court having cognizance thereof, one half thereof to the use of the person who shall prosecute for the same, and the other half to the use of the county in which such conviction shall be had, to be by order of the court paid to the treasurer thereof.

Penalty for
practising
without such
certificate:

How recovered
& applied.

No other per-
son to prac-
tise the same
without four
years study &
obtaining a
certificate
thereof and
a permit.

II. *And be it further enacted*, That no person removing into this state from any of the United States, shall after three months subsequent to such removal, and no other person except such as may be authorized in conformity to the preceding section, shall at any time practise physic or surgery, administer medicine or perform surgical operations within this state, unless it be under the immediate direction of a physician or surgeon with whom he may serve an apprenticeship or study to qualify himself for the profession, until he shall have produced to the chancellor, one of the judges of the supreme court, or master in chancery, or one of the judges of the courts of common pleas within this state, a certificate subscribed by one or more physicians or surgeons with whom he has served an apprenticeship for the purpose of being taught the art of physic and surgery, or with whom he has studied for that purpose, specifying that the person in whose favour such certificate is given hath regularly studied physic or surgery, or both, as the case may be, with the subscriber or subscribers of such certificate for the term of four years, and that he is sufficiently qualified to practise physic or surgery, or both, as the case may be, to which certificate, if the subscriber or subscribers be resident within this state, he or they shall make oath before either of the magistrates or officers herein before mentioned, and the magistrate or officer by whom such oath shall be administered shall then indorse on such certificate a permit that the person therein named is in conformity to law permitted to practise physic or surgery, or both, as the case may be, within this state, and shall subscribe such permit with his name and affix his seal thereto; and the person in whose favour such

permit shall be granted shall file the same in the office of the clerk of the county wherein he resides ; and every person offending in the premises shall for every offence forfeit and pay the sum of twenty-five dollars, to be recovered and applied in like manner as the forfeiture mentioned in the preceding section of this act ; *Provided always*, That if the person in whose favour such certificate shall be given, shall produce satisfactory evidence that he has been graduated in any college or university in this state or elsewhere, then he shall be entitled to such permit although he should not have studied physic or surgery ; or both, as the case may be, any longer than three years ; *And provided also*, That if any such certificate shall be given and attested to by one or more physicians or surgeons not resident within this state, the same shall be attested to before and certified under the hand and seal of a judge of the supreme or superior court of the state in which such certifying physician or surgeon shall reside, and be produced to the chancellor or one of the judges of the supreme court of this state, and if it shall appear to the satisfaction of the chancellor or judge that the certificate and signature of the judge before whom such attestation was made is genuine, he shall then and not otherwise indorse thereon such permit as aforesaid ; *And provided further*, That if any physician or surgeon with whom a person applying for such permit has studied physic or surgery, or both, should be dead or not resident within this state, such permit may nevertheless be granted upon satisfactory evidence being adduced of such death or non-residence, together with satisfactory proof that he has studied physic or surgery, or both, as the case may be, for the term of four years, in which proof shall be specified the name or names of the physicians or surgeons with whom he has studied.

Penalty for practising without such permit :

Proviso, in favor of graduates at a college or university.

Certificates of non-resident physicians how attested.

When certificate cannot be had by reason of death, &c. how supplied.

III. And be it further enacted, That nothing in this act contained shall prevent any person upon any sudden emergency from administering medicine or performing surgical operations without the aid of a regular physician or surgeon, if the same shall be deemed necessary, but such person shall not be entitled to demand or recover any compensation therefor.

In cases of emergency any person may administer medicine, &c. but without compensation.

IV. And be it further enacted, That nothing in this act contained shall be construed to affect any person who may have obtained or shall hereafter obtain the degree of bachelor or doctor of medicine, or any other degree or licence conferring a right to practise physic or surgery, by any academy, college or university within this state or elsewhere having authority to confer such degree ; *Provided*, That the person having obtained, or who shall obtain such degree, shall file a copy thereof in the office of the secretary of this state or in the office of the clerk of the county

This act not to affect any person of the degree of bachelor or doctor of medicine.

wherein he shall reside ; but until such copy shall be so filed the person in whose favour such degree or licence be given, shall not practise physic or surgery within this state without being liable to the forfeiture and payment of twenty-five dollars, to be recovered and applied as other forfeitures by this act are directed to be recovered and applied.

Not physicians or surgeons residing &c. in any other state.

V. *And be it further enacted*, That nothing in this act contained shall be construed to prohibit any physician or surgeon residing in any other state, and duly authorized to practise physic or surgery in such state, from practising within this state whenever thereunto required by any citizen thereof.

Penalty for counterfeiting any certificate or permit.

VI. *And be it further enacted*, That if any person shall counterfeit any certificate or permit intended by this act, and shall be thereof convicted in the supreme court, any of the *circuit courts* † or courts of general sessions of the peace, the court shall in their discretion punish the offender by fine and imprisonment, and the person so convicted, if a practising physician or surgeon, shall never thereafter be permitted to practise physic or surgery within this state ; *Provided always*, That such fine shall not exceed one hundred dollars.

† So in the original.

C H A P. CXXXVIII.

An ACT for the Repacking and Inspection of Beef and Pork.

Passed 4th April, 1801.

An inspector general for the city of New-York and certain repackers and inspectors of beef and pork in other parts of this state to be appointed.

I. **B**E it enacted by the People of the State of New-York, represented in Senate and Assembly, That there shall be an inspector general and ten repackers and inspectors of beef and pork for the city and county of New-York, one or more repackers and inspectors for the city of Albany, one or more for the city of Hudson, and as many in any other parts of this state as shall from time to time be necessary ; and it shall be lawful for the person administering the government of this state by and with the advice and consent of the council of appointment, to make all the requisite appointments, and the persons already appointed to any of the trusts aforesaid shall continue therein during the pleasure of the said council.

Inspector general to take an oath :

II. *And be it further enacted*, That every inspector general hereafter to be appointed for the city and county of New-York, shall before he enters on the execution of his office take and subscribe the following oath or affirmation, before the mayor or recorder or one of the aldermen of the said city :

Form.

“ I do solemnly swear (or, affirm) that I will truly, faithfully and impartially, according to the best of my ability,

perform the duty of inspector general of beef and pork, according to the laws in force in relation thereto, without any wilful omission, neglect or delay whatever."

III. *And be it further enacted*, That it shall be the duty of the said inspector general to superintend the repackers of beef and pork within the said city and county of New-York, and he is hereby authorized to remove any of them who shall act inconsistent with the trust reposed in them from negligence, incapacity, mal-practice or any other cause, and to supply all vacancies which may happen by such removal or by death or resignation by temporary appointments, which shall continue in force until the pleasure of the council of appointment be known ; and it shall be the duty of the said inspector general to report all such cases to the person administering the government of this state as soon as may be ; and the said inspector general is hereby further authorized by writing under his hand and seal, to appoint a deputy to superintend the repackers and inspectors in case of sickness or necessary absence, and also to appoint in the same manner one or more persons for the special purpose of examining and tapping beef and pork as is herein after directed, and to displace the same.

His duty and powers.

IV. *And be it further enacted*, That it shall be the duty of the said inspector general and he is hereby required, once in each of the months of June, July, August and September, and as often as he shall think proper, to examine all beef and pork that may be stored in the said city, and the owner or owners, or agents having the possession, care or direction of any beef and pork stored in the said city, are hereby required to give notice to the said inspector general from time to time during the said months where the same is stored; and to permit the said inspector general to enter into any such store for that purpose, and such inspector general is authorized and required to remove, or cause to be removed to a proper place without the bounds of the said city, all such beef and pork as shall appear to him to be in danger of spoiling or becoming injurious to the health of the inhabitants of the said city ; and the said inspector general shall moreover, on information given to him of any beef or pork stored in the said city being in a putrid state or likely to become so, go to the place or store where the same is said to be and shall examine the same immediately, and shall cause the same to be removed if in his opinion the removal thereof is necessary as aforesaid ; and if any person shall neglect to inform the said inspector general of the place where any beef or pork belonging to or under his direction is stored as above mentioned, or shall oppose or obstruct him in the performance of the duties required of him by this act, such person shall forfeit the sum of fifty dollars

His further duties and powers.

Owners or agents to give him notice where beef and pork are stored :

Penalty for neglect.

for every such offence ; and it shall be the special duty of the said inspector general under his oath of office to inform against and prosecute any repacker or other person whom he can prove to have been intentionally guilty of any offence whatsoever in violation of the regulations of this act, and the district attorney of the district shall proceed on any information made to him by the said inspector general for the punishment of the offender.

Duty of the district attorney.

Further duty of the inspector general.

How provisions shall be stored during certain months:

Penalty for neglect.

V. *And be it further enacted*, That the said inspector general may and he is hereby required to cause to be removed all provisions of any kind out of any cellar or other place where the same may be stowed during the warm season, where from the heat of the weather and the damp or other improper situation of the store or cellar where the same is kept the said provisions may in his judgment be in danger of spoiling ; and all provisions received and stored in the months of June, July, August and September, shall be stored in such manner as that the said inspector general may with convenience examine the same, under the penalty of ten dollars for every such neglect ; and all provisions removed by virtue of this act, shall be removed at the expence of the owner or person having charge of the same, and all damaged provisions shall be by him removed in the warm season aforesaid and thrown into the east or north-river.

Inspector general to make an annual report to the governor :

VI. *And be it further enacted*, That it shall be the duty of the inspector general to make an annual report to the governor to be laid before the legislature, in which report he shall point out whether any and if any what amendments are proper to be made in the laws relative to the repacking of beef and pork, and likewise what quantity of beef and pork has been repacked in the city of New-York in the year preceding such report.

His compensation.

VII. *And be it further enacted*, That the said inspector general shall have and receive from the owner or his agent, for every whole barrel of beef or pork that shall be inspected or repacked by the inspectors or repackers of the said city and county of New-York two cents, and for every half barrel so repacked one cent, and for every barrel or half barrel every time he may examine the same in the months of June, July, August and September two cents, and if occasion shall require the unheading any of the said barrels, the said inspector general shall receive for every barrel and half barrel so unheaded and headed up again six cents.

Repackers to take an oath :

VIII. *And be it further enacted*, That every of the repackers to be appointed by virtue of this act shall before he enters upon the execution of his office, take the following oath or affirmation before any justice of the peace, viz.

"I do solemnly swear (or, affirm) that I will faithfully, truly and impartially, according to the best of my judgment, skill and understanding, execute the office and duty of an inspector and repacker of beef and pork, according to the true intent and meaning of the laws of this state relative to the same, and that I will not directly or indirectly brand or suffer to be branded any casks of beef or pork but what shall be sound and good.

Form.

IX. And be it further enacted, That the said repackers shall provide themselves with good and sufficient stores capable of receiving and storing such beef and pork as may be brought to them for inspection, but nothing shall be allowed for storage of any beef or pork inspected by them, if it shall be removed or taken away within three days after notice given to the owner or agent of its being repacked; and the said repackers and inspectors within the city and county of New-York are hereby required to follow such instructions and directions as they or any of them may receive from time to time from the said inspector general in relation to the duties required of them by this act.

Certain duties of the repackers.

Repackers & inspectors in the city of New-York to pursue the instructions of the inspector general.

X. And be it further enacted, That no beef or pork shall be repacked in the said city of New-York southward of a line beginning at the east-river, running up Catharine-street to Chatham-street, down Chatham-street to the public buildings, in front of said buildings to Broadway, down Broadway to Barclay-street and down Barclay-street to the north-river; and no provisions of any kind shall be inspected in the said city in the months of June, July, August and September in any year to the southward of a line to be drawn from Rutgers slip on the east-river to Harrison-street on the north-river, and only on the margin of the said rivers within the period aforesaid.

No beef or pork to be repacked in said city southward of a certain line.

Nor any provisions during certain months southward of another line and only on the margin of the rivers.

XI. And be it further enacted, That all barrels and half barrels in which any beef or pork shall be repacked, shall be made with good seasoned white oak, rock oak or white ash staves and heading clear of sap, and such pork barrels shall be of a capacity to contain not less than twenty-nine nor more than thirty-one gallons, and half barrels not less than fifteen nor more than sixteen gallons, and such beef barrels shall be of a capacity to contain not less than twenty-eight nor more than thirty gallons, and half barrels not less than fourteen nor more than fifteen gallons; each beef and pork barrel shall have twelve good hoops, the quarter hoops well secured with wooden pegs, and the chime hoops with nails, and the head flanged off; that the said barrels and half barrels shall in the opinion of the said inspector general be every way strong and tight enough to prevent the pickle from leaking out, and in all cases the heading and staves shall be of the same kind of stuff, and all the said barrels shall be as nearly straight

Description of the barrels for repacking

And of half barrels:

Weight to be
contained in
each.

Provido, as to
the counties
on Long-I-
and.

Duty of the
repackers as
to the pack-
ing & brand-
ing of pork :

Size of the
pieces.

Description of
the beef for
exportation :

How to be cut
and salted.

as may be ; that a barrel of beef shall have two hundred pounds of beef packed therein, and a barrel of pork shall have two hundred pounds of pork packed therein, and a half barrel of either shall have one half the said quantities respectively ; *Provided however*, That all beef and pork which shall be repacked in and exported from the counties of Suffolk, Queens and Kings may be packed in barrels made of good seasoned red oak or black oak staves and heading free from sap of the growth of the said counties respectively, and made otherwise as above directed, and the same may be exported from New-York as well as from the said counties without again being repacked, but the same may be repacked in the city of New-York if the owner shall request it.

XII. *And be it further enacted*, That the said repackers shall examine and sort all pork to be by them examined, and such only as is well fatted shall be repacked by them ; that the best quality of pork shall be denominated *Mess Pork*, and shall consist of none but the sides of good fat hogs, and the barrels containing it shall be branded on one of the heads, "*Mess Pork*," and the second quality shall be denominated *Prime Pork*, of which there shall not be in a barrel more than three shoulders without the legs which shall be cut up to the knees, and shall not contain more than twenty-four pounds of head that shall have the ears and snouts cut off, and one of the heads of every such barrel of pork shall be branded "*Prime Pork*," and the third quality of pork shall be denominated *Cargo Pork*, of which there shall not be in a barrel more than four shoulders without the legs, and not more than two heads, which heads shall not exceed thirty pounds weight, and shall be otherwise merchantable pork, and shall be branded on the head "*Cargo Pork*," that every half barrel of mess, prime or cargo pork shall contain one half the quantity of the different kinds or qualities of pork of a whole barrel ; pork so to be repacked shall be cut into pieces as nearly square as may be and may be cut from the back bone to the belly ; *Provided*, That no pieces of pork shall in size exceed twelve nor be under four pounds weight, otherwise the barrels containing the same shall not be branded as merchantable ; in every whole barrel of pork there shall not be less than half a bushel of good St. Ubes or hard salt, and in every half barrel one peck.

XIII. *And be it further enacted*, That no beef which shall be killed after the passing of this act shall be repacked in barrels for exportation unless it be of fat cattle not under three years old ; that all such beef shall be cut into pieces as nearly square as may be and which in size shall not exceed eight nor be under five pounds weight, and no flank or bony piece shall be put in as merchantable from which the meat or any part of it shall have been cut

for smoking or otherwise ; that no beef shall be repacked by the said inspectors and marked by them as hereinafter mentioned unless it shall have been well rubbed and put down with a sufficient quantity of dry salt and pickle; or dry salt until it shall be struck through with salt to the satisfaction of the inspectors, otherwise it shall be the duty of the repacker to cause it to be well rubbed himself with dry salt until the blood and water are sufficiently extracted and the salt fully struck in, the expence of which shall be paid to the repacker before the beef so salted by him shall be taken away ; and no pickle shall be put to any beef before it is repacked by one of the repackers authorized as above mentioned, otherwise the same shall not be branded as merchantable ; all beef that shall have been killed under the age before mentioned, or that shall be poor or not sufficiently fattened, or which shall have been managed differently from the directions of this act, or that is any way unmerchantable may be put up into barrels, but shall not be branded with either weight, quality or inspector's name, nor the name of any city or county within this state ; that all beef which the repacker shall on examination find to have been killed at a proper age, fat, well salted and otherwise good and merchantable, shall be sorted and repacked by him, and shall be divided into three kinds, to be denominated *Mess*, *Prime* and *Cargo Beef* ; *Mess Beef* shall consist of the choice pieces of such beef as is large and fat without hocks, shanks or necks, which choice pieces shall be put into barrels by themselves, and on one of the heads of each barrel containing this description shall be branded the words "*Mess Beef* ;" that the *Prime Beef* shall consist of the next best pieces made of good fat cattle, in which there shall not be more than half a neck nor more than two shanks with the hocks cut off in a barrel, and on one of the heads of all barrels containing beef of this description shall be branded the words "*Prime Beef* ;" that *Cargo Beef* shall be of fat cattle with a proportion of good pieces, and not more than half a neck and three shanks with the hocks cut off in a barrel, and to be otherwise merchantable, and on one of the heads of the barrel containing beef of this quality shall be marked the words "*Cargo Beef* ;" that the repackers in repacking the said beef shall put two and a half pecks of coarse salt, St. Ubes salt if to be had, into each barrel of the said beef together with three ounces of salt petre, and one half of the said quantities into each half barrel ; And further, That it shall be lawful to put up and to export from this state a fourth quality of beef to be denominated and marked "*Heads, Hearts and Hocks*," to consist of legs, necks, hearts and the meat of heads, and which fourth quality shall be subject to the like management and inspection as the other qualities of beef are hereby made subject to.

How to be treated before repacking.

Beef of a certain description not to be branded.

Different qualities of beef how to be branded.

If the barrels be larger how to be disposed of.

Inspected beef and pork to be so marked.

Branding irons to be secured.

Meat to be screwed and not pounded under a penalty.

Exemption in favor of persons curing & putting up 200 barrels or more of beef or pork in one year.

Barrels to be branded on the side with the name of the person making them.

Where beef & pork may be repacked:

At what places in the city of New-York.

XIV. *And be it further enacted,* That if the barrels and half barrels shall be larger than the dimensions aforesaid, the same shall be condemned by the repacker, or be filled up by him with good pieces of beef or pork at the expense of the owner; every barrel and half barrel of merchantable beef and pork inspected, admitted and repacked as aforesaid, shall be distinctly branded in large letters on one of the heads thereof, "*Inspected,*" with the weight in figures, the initial of the christian name and the surname at length of the inspector, and the name of the city, town or county wherein it was repacked, and the quality as above mentioned; every inspector as aforesaid shall carefully secure his branding irons so as to put it out of the power of his servants or others to obtain and make use of the same contrary to the true intent and meaning of this act, and each inspector shall be provided with a screw suitable for the purpose to press down the meat into the barrels, and no weight of any kind shall be used to pound the meat to force it into the barrel under the penalty of ten dollars for every such offence.

XV. *And be it further enacted,* That if any person within this state shall secure and put up any quantity of beef or pork not less than two hundred barrels of each, within one year, and shall put the same in barrels or half barrels containing the weight specified in this act, and shall produce a certificate from a justice of the peace of the place where such beef or pork was put up, purporting that such person had cured and put up the number of barrels or half barrels aforesaid containing the weight aforesaid within the same year, together with an affidavit to the same purport of the person who did cure and put up such beef and pork, it shall be lawful for such person to export such beef and pork without being further repacked, upon branding his name at full length on one head of each barrel or half barrel.

XVI. *And be it further enacted,* That no beef or pork put up in this state shall be repacked unless the barrels or half barrels containing the same shall be branded on the bilge or side with the initial of the christian name and the surname at full length of the person making or causing such barrels or half barrels to be made; and it shall be the duty of the person making or causing to be made such barrels or half barrels to brand the same as aforesaid.

XVII. *And be it further enacted,* That it shall be lawful for any owner of any beef or pork, to have the same repacked in any store, yard or vessel, except in the city and county of New-York, by either of the said repackers; and that no beef or pork shall be repacked in any place in the city and county of New-York except in the stores to be appointed for that purpose by the said repackers ac-

According to the directions of this act, under the penalty of ten dollars for every such offence; that the repackers shall have and receive from the owners of beef and pork, for repacking the same in the stores by the said repackers provided for that purpose, at the rate of twenty cents for each barrel and twelve cents for each half barrel, and if repacked in any other store, yard or vessel twenty-five cents for each barrel and fifteen cents for each half barrel, and whether repacked in the store provided by the repackers or in any other yard, store or vessel the repacker shall receive for each hoop wanting and put on by such repacker three cents, and for flagging, nailing, pegging and pickling each barrel twelve and an half cents, and each half barrel nine cents, the owner paying for or furnishing the salt and salt petre; and the owner of any beef or pork is hereby authorized by himself, and if he choose in his own store or yard, to hire his beef or pork pickled after it has been inspected and branded according to the provisions of this act.

Compensation
to repackers.

XVIII. *And be it further enacted*, That no beef or pork shall be exported from this state unless repacked as aforesaid, and if any person shall export or ship for exportation out of this state, any beef or pork not being inspected and branded by one of the sworn inspectors as aforesaid, and pickled by such inspector or the owner thereof, every such exporter or shipper, and the master of every vessel having on board uninspected beef or pork shall upon conviction respectively forfeit and pay the sums following, that is to say: For every barrel so exported or shipped for exportation the owner or exporter shall forfeit the sum of five dollars, and the master of every vessel having the same on board the sum of one dollar; *And further*, That the said repackers and inspectors and every of them shall have full power and authority by virtue of this act, on suspicion that any beef or pork not inspected as aforesaid hath been shipped in any vessel for exportation, to apply to any justice of the peace, and on oath to assign to such justice the causes of such suspicion, and if the said justice shall think the said suspicion well grounded, he shall issue his warrant to the said inspector or inspectors to enter on board any vessel whatever loading or laden in this state either in the whole or in part, and to search for and make discovery of any beef or pork shipping or shipped on board any such vessel for exportation out of this state; and if any of the inspectors shall discover any beef or pork not repacked, branded and pickled as directed in and by this act on board of any such vessel, such inspector shall apply to such justice of the peace, who is hereby authorized and required to issue his warrant directed to some peace officer or officers commanding him or them to enter on board every such vessel having on board

No beef or
pork to be ex-
ported unless
repacked:

Penalty
against offend-
ers.

Power of re-
packers and
inspectors
with respect
to searches.

such uninspected beef or pork and cause the same to be relanded and delivered to the owner or owners, upon his or their paying the expence of such search and relanding; and if any person shall obstruct or hinder any inspector from making such search as aforesaid, or any peace officer in relanding such beef or pork, he shall forfeit and pay the sum of two hundred and fifty dollars.

Penalties for shifting beef or pork repacked, or filling up and offering for sale barrels with old brands.

XIX. *And be it further enacted,* That if any person shall at any time hereafter fraudulently intermix, take out or shift any beef or pork that has already been repacked and branded, every such person shall forfeit and pay for every such offence the sum of fifty dollars; and if any person shall fill up with beef or pork any barrel or half barrel from which beef or pork has been taken, and which was branded as by law directed, and shall sell it or offer to sell it under the old brand, he shall forfeit the sum of fifty dollars for each barrel and twenty-five dollars for each half barrel so filled up and sold or offered for sale.

No inspector or repacker shall buy or sell any beef or pork except remnants

XX. *And be it further enacted,* That no inspector or repacker of beef and pork shall hereafter, under any pretence whatever, buy or sell any beef or pork excepting remnants which may be occasioned by the barrels over-running or falling short of the weight required by law.

Penalty on repackers for neglect of duty, and on inspectors for acting out of their city and county, and on others for using the like brands.

XXI. *And be it further enacted,* That if any repacker of beef or pork shall neglect or delay to repack any merchantable beef or pork when thereunto required by the owner or owners thereof for the space of forty-eight hours, every such repacker shall for every neglect pay to such owner or owners the sum of five dollars; and no inspector of beef and pork shall inspect or brand any cask of beef or pork out of the city or county for which he shall be appointed an inspector, upon pain of forfeiting the sum of fifty dollars, and if any persons, other than the said inspectors, shall brand any casks of beef or pork in the manner directed by this act, every person so offending shall forfeit the sum of fifteen dollars for every cask so branded.

Penalty on repackers for offences against this act.

XXII. *And be it further enacted,* That for every offence which the said repackers shall commit against the true intent and meaning of this act, he or they so offending and being thereof convicted, shall forfeit one hundred and fifty dollars and be rendered incapable of serving again in the office.

Penalties and forfeitures how recovered & applied.

XXIII. *And be it further enacted,* That every of the forfeitures and penalties aforesaid may be recovered with costs of suit before any justice of the peace or in any court having cognizance thereof, by any person who will sue and prosecute for the same, one moiety of which said forfeitures and penalties when recovered shall be paid to the overseers of the poor of the city or town where the offence shall be committed for the use of the poor

thereof, and the other moiety thereof to such person as will sue for the same as aforesaid.

XXIV. *And be it further enacted*, That it shall be the duty of the secretary of this state to furnish the said inspector general with the names of all persons who shall be appointed inspectors and repackers of beef and pork in any part of this state, and with the names of all inspectors and repackers who shall be displaced, immediately after the same shall be so appointed or displaced, without fee or reward.

Duty of the secretary of state.

XXV. *And be it further enacted*, That it shall be the duty of every deputy inspector appointed as aforesaid, in the month of May in every year hereafter, to make return to the inspector general of the number of barrels and half barrels of beef and pork inspected by him in the preceding year agreeably to the directions of this act, designating in such return the number of each; and it shall be the duty of the said inspector general in the month of June annually to make return to the person administering the government of this state for the time being, of the whole number of barrels and half barrels of beef and pork inspected as aforesaid by him and his deputies in the preceding year, designating in such return the number of each.

Deputy inspectors annually to report to the inspector general who shall report to the governor.

XXVI. *And be it further enacted*, That nothing in this act contained shall prevent the exportation of rounds of beef in kegs or tubs, as is now practised; *Provided however*, That the name of the person who shall put up such rounds shall be branded on the head of each keg or tub, under the penalty of ten dollars for each keg or tub not branded as aforesaid.

Rounds of beef in kegs or tubs may be exported as formerly. Provided.

C H A P. CXLVI.

An ACT relative to District Attornies.

Passed 4th April, 1801.

I. **B**E it enacted by the People of the State of New-York, represented in Senate and Assembly, That the person administering the government of this state shall as often as may be necessary, by and with the advice and consent of the council of appointment, appoint and commission a proper person to the office of district attorney in each of the districts hereinafter mentioned, each of whom shall be of the degree of counsel in the supreme court and resident in such district; and that the said districts shall be as follows, to wit: The city and county of New-York, and the counties of Suffolk, Queens, Kings, Richmond and Westchester shall be one district; the counties of Rockland, Orange, Dutchess, Ulster and Delaware shall be one other district; the counties of Greene, Columbia

District attornies to be appointed.

The districts defined.

and Rensselaer shall be one other district; the counties of Washington, Essex and Clinton shall be one other district; the counties of Albany, Saratoga, Montgomery and Schoharie shall be one other district; the counties of Otsego, Herkimer, Oneida and Chenango shall be one other district; and the counties of Tioga, Onondaga, Cayuga, Ontario and Steuben shall be one other district; that except with respect to the courts of oyer and terminer and gaol delivery in the city and county of New-York, it shall be the duty of the several district attorneys to attend the courts of oyer and terminer and gaol delivery and general sessions of the peace to be from time to time held within the districts for which they are or shall be appointed respectively, and to conduct all prosecutions for crimes and offences cognizable in the said courts, and that it shall be the duty of the attorney general to conduct all public prosecutions at the courts of oyer and terminer and gaol delivery in the city and county of New-York; *Provided nevertheless*, That it shall be lawful for the person administering the government of this state, or any judge of the supreme court by writing under his hand to require the attorney general to attend the court of oyer and terminer and gaol delivery to be held in any county, and it shall be the duty of the attorney general to attend accordingly, and thereupon to conduct at such court all public prosecutions; and the district attorney for such district shall in such matters as appertain to his office and shall be required of him by the attorney general, aid in conducting the same; and it is hereby declared that for their services and expences on these occasions the attorney general and the district attorney shall be deemed to be entitled to an additional allowance beyond the usual salary or other compensation, to be audited by the court of exchequer and paid in like manner as the other compensation allowed to the district attorney.

Their duty.

The attorney general may be required to attend with the district attorneys.

Compensation in such cases to the attorney general and district attorneys.

Attorney general and district attorneys to certify convictions into the exchequer

II. *And be it further enacted*, That the attorney general shall with respect to attainders, outlawries and convictions in the supreme court, and in the courts of oyer and terminer and gaol delivery in the city and county of New-York, and the respective district attorneys shall with respect to attainders, outlawries and convictions in the courts of oyer and terminer and gaol delivery in the other counties, and in the courts of general sessions of the peace in the several counties within their respective districts, of any person for any manner of treason or felony, *without fee or reward*,* certify into the court of exchequer at the next term, there to remain of record, a transcript containing the tes-

* Note. These words *without fee or reward* are to be met with in the provision contained in the 11th sec. ch. 37, sec. 4, and which was incorporated into this section, but they were probably retained here by mistake, so far as they apply to the district attorneys, as in the act for regulating fees, passed afterwards in this same session, the district attorneys are allowed a fee for the service here required. Editors.

or and effect of every such attainder, outlawry or conviction, and of the indictment upon which the same shall be so had, that is to say, the name, surname and addition of every such person so convicted, outlawed or attainted, and the felony or other offence whereof he shall be so convicted, outlawed or attainted, and the day and place of the conviction, outlawry or attainder, and before whom the same was had, and the day and place, when and where the said felony or other offence was done, and the judgment thereupon given, upon pain to forfeit for every omission or neglect the sum of twenty-five dollars to the people of this state; and the clerk of the court of exchequer shall receive all such certificates and transcripts when the same shall be presented and offered to him by any of the officers aforesaid without taking any thing for the same, and shall at all times without fee or reward, when requested by the attorney general of this state or by any prosecutor against any person named in any such certificate or transcript for any second offence, make and deliver to the attorney general or prosecutor a true copy of such certificate or transcript, certified under his hand and the exchequer seal; and every such copy so certified shall be good evidence of such former conviction, outlawry or attainder.

Penalty for neglect.

Copies to be furnished by the clerk of the exchequer when required, which shall be good evidence.

III. *And be it further enacted*, That the accounts of the several district attorneys for their services shall be examined and audited in the court of exchequer, and the amount of their compensation thereupon to be allowed shall be paid by the the treasurer of the state on the warrant of the comptroller, to be issued on a certificate of such compensation under the hand of the judge and seal of the said court.

Accounts of the district attorneys where to be audited and allowed.

IV. *And be it further enacted*, That it shall be the duty of the district attorney of the district in which the Oneida and Stockbridge tribes of Indians reside, to advise and direct the said Indians in all controversies that may arise between the said tribes or any individual thereof and any other person whatever, and to defend every suit that may be instituted against the said Indians or any of them, and also to institute any suit he may deem necessary and proper for the said Indians; and in case of trespasses committed on the lands reserved for the use of the said Indians, to bring such suits in the name of the Oneida or Stockbridge Indians as may be necessary to recover damages for such trespasses; and the monies to be recovered, after deducting the expences attending the recovery, shall be paid over by such district attorney to the treasurer of this state to and for the use of the said Indians, and it shall be sufficient in the declarations in such suits to charge the defendant or defendants with having broken and entered the close of the Oneida or Stockbridge Indians, and cut, taken and carried away the trees, timber or other proper-

Duty of one of the district attorneys with respect to the Oneida and Stockbridge Indians.

Subject to the direction of the governor therein.

ty, as the case may be, then and there being; *Provided nevertheless*, That in the prosecution or defence of any such suits, the district attorney shall observe such advice and directions as shall be given him, if any, by the person administering the government of this state.

Compensation therefor.

V. *And be it further enacted*, That such district attorney shall receive as a compensation in the premises one hundred and fifty dollars per annum.

C H A P. CXLVII.

An ACT relative to Indians.

Passed 4th April, 1801.

Any person buying or contracting for land with any Indians, without the consent of the legislature, to incur a forfeiture and be punished by fine and imprisonment.

I. **B**E it enacted by the People of the State of New-York, represented in Senate and Assembly, That if any person without the authority and consent of the legislature of this state, shall in any manner or form or on any terms whatsoever purchase any lands within this state of any Indian or Indians residing therein, or make any contract with any Indian or Indians for the sale of any lands within this state, or shall in any manner give, sell, demise, convey or otherwise dispose of any such lands or any interest therein, or offer so to do, or shall enter on or take possession of or settle on any such lands by pretext or colour of any right or interest in the same, in consequence of any such purchase or contract made since the fourteenth day of October, one thousand seven hundred and seventy-five, and not with the authority and consent of the legislature of this state, every such person shall in every such case be deemed guilty of a public offence, and shall on conviction thereof before any court having cognizance of the same, forfeit and pay to the people of this state two hundred and fifty dollars and be further punished by fine and imprisonment at the discretion of the court.

No action to be maintained on any contract against certain Indians.

II. *And be it further enacted*, That no person shall sue or maintain any action on any bond, bill, note, promise or other contract hereafter to be made, against any of the Indians called the Stockbridge Indians, nor against any Indian residing in Brothertown or on any lands referred to the Oneida, Onondaga or Cayuga Indians, and every person who shall sue or prosecute any such action against any of the said Indians shall be liable to pay treble costs to the party grieved; *Provided*, That this section shall not extend to any action or suit on any contract made before the first day of July in the year one thousand seven hundred and ninety.

Proviso.

Any person selling ardent spirits to any Indian in cer-

III. *And be it further enacted*, That if any person shall sell to any Indian belonging to the Oneida, Stockbridge or Brothertown tribe any rum, brandy, gin or other ardent

spirits within the counties of Oneida or Chenango, he shall be deemed guilty of a public offence, and on conviction thereof be fined at the discretion of the court, not exceeding twenty dollars for one offence, and shall also forfeit the sum of five dollars for every such offence, to be recovered in an action of debt with costs in any court having cognizance thereof, by any one who will sue for the same, the one half of which forfeiture to be paid to the prosecutor and the residue to the overseers of the poor for the town in which such recovery shall be had for the use of the said poor; *Provided*, That on the recovery of such forfeiture the offender shall not be liable to any other or further prosecution for the said offence.

tain counties to be punished by fine and incur a forfeiture.

Forfeiture how to be recovered and applied.

Provide.

IV. *And be it further enacted*, That if any person shall sell any rum, brandy, gin or other ardent spirits within the limits of the tract of land owned by the Muhennuck or Stockbridge Indians, or within the reservation lands of the Oneida or Brothertown Indians, he shall forfeit twenty dollars for every such offence, to be recovered with costs in manner aforesaid, one half thereof to be paid to the prosecutor and the residue to the district attorney of the district within which the said tribes of Indians reside, to be by him paid into the treasury of this state for the use of the tribe of Indians where such offence shall happen.

Any person selling ardent spirits within certain limits to incur a forfeiture :

How to be recovered and applied.

V. *And be it further enacted*, That no pawn taken of any Indian within this state for any spirituous liquor shall be retained by the person to whom such pawn shall be delivered, but the thing so pawned may be sued for and recovered with costs of suit by the Indian who may have deposited the same before any court having cognizance thereof.

A pawn taken of any Indian for spirituous liquor to be recovered back.

VI. *And be it further enacted*, That it shall be lawful for the comptroller on the order of the person administering the government of this state, to draw his warrants on the treasurer for the payment of such sums of money as shall from time to time be necessary for incidental charges attending Indian affairs, not exceeding five hundred dollars in any one year; and it shall also be lawful for the person administering the government of this state, to appoint such persons as he shall see fit to provide for and entertain all Indians who may visit the seat of government on any business, and to order the comptroller to draw his warrant on the treasurer for such sum or sums of money to defray the expence of entertaining such Indians in favour of such persons as he shall direct, not exceeding in any one year the sum of one thousand dollars.

Money appropriated for incidental charges attending Indian affairs.

VII. *And be it further enacted*, That all the agreements and stipulations heretofore made by agents appointed on the behalf of this state with the Oneida, Onondaga and Cayuga tribes of Indians, and the Indians called the

Certain agreements & stipulations made with Indians, confirmed.

St. Regis Indians respectively, as contained in certain articles of agreement bearing date respectively on the twenty-seventh and twenty-eighth days of July and the fifteenth day of September, in the year one thousand seven hundred and ninety-five, and in a treaty made with the said Oneida Indians on the first day of June, in the year one thousand seven hundred and ninety-eight, and in a treaty made with the said St. Regis Indians on the twenty-third day of May, in the year one thousand seven hundred and ninety-six, and which are filed in the office of the secretary of this state, shall be and hereby are ratified and confirmed.

Treasurer annually to pay to the order of the governor on the warrant of the comptroller annuities to certain Indians.

Where and in what manner to be paid.

Provido, with respect to monies for the use of public schools

VIII. *And be it further enacted*, That the treasurer of this state shall annually on the warrant of the comptroller pay to the order of the person administering the government of this state, out of any monies in the treasury, the following sums, to wit: The sum of four thousand eight hundred and sixty-nine dollars and twenty-eight cents for the use of the Oneida tribe of Indians, the further sum of two thousand dollars for the use of the Onondaga tribe of Indians, the further sum of two thousand three hundred dollars for the use of the Cayuga tribe of Indians, and the further sum of fifty dollars for the use of the posterity of the Cayuga chief Fish Carrier, being the annuities to be paid to the said tribes and the posterity of the said Fish Carrier respectively, and in lieu of all former annuities in conformity to the said articles and the said treaty with the Oneida Indians, which said annuities shall be paid on the first day of June in every year at the several places specified in the said articles and treaty for that purpose at the expence of this state, and the person administering the government of this state is hereby authorised to cause the said annuities to be paid in such manner and by such persons as he shall think proper, and as may be most agreeable to the said Indians and the least expenfive to this state, and for that purpose he may direct the surveyor general to perform the service, or make such arrangements or contracts with any other persons relative thereto as he may judge proper; *Provided however*, That such part of each of the said annuities as the person administering the government of this state shall in his discretion for that purpose direct, shall be first appropriated to the support of the public school, if any, instituted within the limits assigned to the said tribes respectively, in which Indian children shall be taught, and that the monies so appropriated for the support of public schools within the said Oneida tribe, shall be distributed in such manner as that the several villages of the said Oneida tribe may as near as may be equally enjoy the benefit thereof.

IX. *And be it further enacted,* That the tract of land of six miles square confirmed by the Oneida Indians to the Stockbridge Indians by the treaty held at Fort Stanwix, in the year one thousand seven hundred and eighty-eight, shall be called New-Stockbridge, and be and remain to the said Stockbridge Indians and their posterity forever, but without any power of alienation or right of leasing or disposing of the same or any part thereof.

Lands in New-Stockbridge, vested in the Indians and their posterity:

But without the power of alienation.

X. *And be it further enacted,* That it shall be lawful for the male Indians residing in New-Stockbridge, and above the age of twenty-one years, on the first Tuesday of May in every year to meet together in New-Stockbridge aforesaid, and by a plurality of votes to elect one clerk, and one person to be called a marshal, and three persons to be called peace makers, and it shall be the duty of the said clerk to preside at such meetings, and to enter in a book to be by him provided for that purpose the proceedings of the said meetings and of the said peace makers as by this act directed, and it shall be the duty of the said marshal to execute the orders of the said peace makers made in pursuance of this act.

New-Stockbridge Indians annually to elect a clerk, marshal and peace makers.

Duty of the clerk

And marshal.

XI. *And be it further enacted,* That it shall be lawful for the said peace makers, as often as they shall judge it necessary, to call a special meeting of the said Indians being of the age aforesaid and residing in New-Stockbridge, at such times and places as they shall direct for any of the purposes directed by this act.

Peace makers may call special meetings.

XII. *And be it further enacted,* That it shall be lawful for the Indians in New-Stockbridge entitled to vote at such meetings, by a plurality of votes, at any of the said meetings to determine on the laying out of their said lands for separate improvements, and also to make such bye-laws as they shall judge necessary for the improvement of their common lands, laying out and working on highways, regulating fences and the trespassing of cattle, under such penalties as they shall direct, and not exceeding three dollars for one offence, to be recovered by any of the said Indians who will sue for the same in the manner herein after prescribed; *And also,* To admit any Indian of any other tribe or nation to become an inhabitant of New-Stockbridge and to enjoy with them equal privileges therein, but all the votes respecting the admission of any such Indian shall be entered in the clerk's book aforesaid.

Indians at such meetings to determine on laying out their lands &c to make certain bye-laws

Under certain penalties;

And may admit Indians of any other tribe.

XIII. *And be it further enacted,* That it shall be the duty of the said peace makers to lay out such parcel or parcels of the said lands in New-Stockbridge, as shall be agreed on at any such meeting as aforesaid, for the separate improvement of each person or family of the said Indians, which shall be marked out and described by the said peace makers, and a description thereof in writing deliver-

Peace makers to lay out such lands.

When the same shall be forfeited by such Indians.

any Indian to whom any part of the said lands hath been or shall be assigned as aforesaid, hath neglected or shall neglect to take possession of the same within one year after becoming entitled thereto, or hath left or shall leave Brothertown for the space of one year, such Indian shall be deemed to have forfeited all right to the said land, and the said superintendants shall thereupon at their discretion assign the same to any other Indian then residing in and entitled to land in Brothertown.

On the death of an Indian how his lands shall descend.

XXI. *And be it further enacted*, That upon the death of any Indian residing in Brothertown to whom any land hath been or shall be assigned as aforesaid, or who shall be entitled thereto, if such Indian shall die possessed thereof leaving issue, the same shall go to and be equally divided among such issue, if they are all in equal degree of kindred to the deceased, but if such Indian shall leave a child or children and the issue of a deceased child or children, then such issue shall stand in the place of the parent, and take only such share as the parent would have taken if living, and the like division *per stirpes* shall be made among the descendants of such deceased Indian in the remotest degree, and if such Indian leave no issue, then the said land shall revert to the Brothertown Indians, and the said superintendants shall thereupon assign the same to some other Indian or Indians entitled thereto as aforesaid; *Provided however*, That the widow of the deceased shall in all cases have a right to continue in the house her husband died possessed of during her widowhood, and the superintendants shall also assign to her so much of the said land of her husband as they may think necessary.

If no issue, to revert to the Brothertown Indians.

Right of the widow of the deceased.

Annalities to the Indians how to be paid and applied.

XXII. *And be it further enacted*, That the treasurer of this state shall annually on the first Monday of August in every year, pay out of any monies not otherwise appropriated, on the warrant of the comptroller and to the order of the person administering the government of this state, the sum of two thousand one hundred and sixty dollars and seventy-nine cents, being the amount of the interest of the monies arising from the sales of land of the said Indians in Brothertown, at the rate of six per cent, who shall cause so much thereof as he shall deem necessary for that purpose to be applied to the maintaining a school in Brothertown for the education of Indian children, and the remainder after payment of the salary of the attorney herein after mentioned, to the use of the Indians resident in Brothertown as he shall judge most beneficial for them.

Indians may sell and convey certain lands to the peace makers for the use of the public school.

XXIII. *And be it further enacted*, That it shall and may be lawful for any of the Indians entitled to and residing on lands in Brothertown, and to whom land adjoining the public school has been granted, to sell and convey to the peace makers of Brothertown so much of their said land adjoining the said public school as in the judgment of the

said peace makers may be sufficient for the use and accommodation of the master of the said school for the time being, not exceeding twenty-five acres, for which such Indian or Indians shall be paid by the superintendants out of the annuity of the Brothertown Indians, such sum per acre as shall be agreed on by such Indian or Indians and the said peace makers, and approved of by the said superintendants; and the said land so to be purchased as aforesaid shall be held by the said peace makers and their successors in trust for the sole use and accommodation of such schoolmaster as shall from time to time be employed in keeping the said public school.

XXIV. *And be it further enacted*, That it shall be lawful for the person administering the government of this state as often as may be necessary, by and with the advice and consent of the council of appointment, to appoint and commission some proper person, learned in the law, to be the attorney of the said Indians during the pleasure of the said council, but the person already appointed attorney as aforesaid shall continue in office during the pleasure of the said council, and the said attorney shall from time to time advise and direct the said Indians residing in Brothertown in the controversies among themselves and with any other person, and defend all actions brought against any of them by any white person, and commence and prosecute all such actions for them or any of them as he may find necessary or proper; and in the prosecution and defence of any such actions he shall observe and pursue such advice and directions as shall be given him, if any, by the said superintendants, and shall receive as a compensation for his services and expences in the premises the yearly salary of one hundred and twenty-five dollars, to be paid out of the said interest money.

An attorney to be appointed for said Indians.

His duty.

To pursue the directions of the superintendants.

His compensation.

XXV. *And be it further enacted*, That it shall be lawful for any Indian, whether male or female, to whom any of the said lands in Brothertown has been or shall be assigned as aforesaid, or who shall become entitled to the same, to sue and maintain actions of trespass and to recover damages to his or her own use for any trespass which shall be committed upon such land.

Indians may maintain actions for trespass on their separate lands.

XXVI. *And be it further enacted*, That it shall be lawful for the said attorney of the Brothertown Indians to sue and maintain actions of trespass in the name of the Brothertown Indians for any trespass committed since the first day of October, in the year one thousand seven hundred and ninety-five, or which shall hereafter be committed upon any part of the said land set off for the said Indians and not assigned to any particular Indian or family; and the damages to be recovered in every such action, after deducting all expences attending the recovery, shall be paid by the said attorney to the said superintendants, to

How actions may be maintained for trespasses on their common lands.

Damages recovered how to be applied.

be by them applied to and for the relief and benefit of the Indians then residing in Brothertown.

Indians may cut timber on their separate or common lands for certain purposes.

XXVII. *And be it further enacted*, That it shall be lawful for the said Indians residing in Brothertown to cut timber on any part of the said tract set apart for their use, whether the same be assigned to any particular Indian or family or not, for the purpose of making or repairing highways and bridges within the same tract, and also to cut timber on any part of the said tract not assigned to any particular Indian or family for the purpose of repairing their buildings and erecting others, but for no other purpose ; and if any other person shall at any time cut or carry away any timber being upon any part of the said tract set apart for the said Indians, every such person shall be liable to an action of trespass for the same notwithstanding any sale, lease or licence from the said Indians, or any of them, and if any such trespass be committed upon the land assigned to any particular Indian or family, and the person or persons entitled to the same do not within thirty days thereafter require the said attorney for the Brothertown Indians to commence and prosecute a suit for the same, then the said attorney shall bring an action for the same in the same manner as if the trespass was done on some part of the said tract not assigned to any particular Indian or family ; and the declaration in such case shall charge that the defendant broke and entered the close of the Brothertown Indians and cut or carried away the trees or timber there growing or being, and no plea or evidence that the place where such trespass was committed had been assigned to any particular Indian or family, nor any licence, or release or agreement of any Indian or Indians shall be any bar to any such action, and the damages recovered in every such action shall be applied in the same manner as the damages recovered for trespasses on the parts of the said tract not assigned to any particular Indian or family.

But any other person liable to be prosecuted whether the same be done with or without licence from the Indians.

By whom and in what manner such person to be sued.

Charge in the declaration.

Damages recovered how to be applied.

Five keepers of the peace to be appointed.

Their power and duty.

To hold a court, and the proceedings therein.

XXVIII. *And be it further enacted*, That it shall be lawful for the person administering the government of this state, as often as may be necessary, by and with the advice and consent of the council of appointment, to appoint and commission five of the Indians residing in Brothertown to be keepers of the peace there, who shall hold their office during the pleasure of the said council ; *Provided*, That the keepers of the peace already appointed therein shall continue to hold their offices during the pleasure of the said council, and the said keepers of the peace shall severally have power to keep the peace in Brothertown, and any three or more of them shall also have power to hold a court at the school house or at such other place in Brothertown as they shall appoint, on the first Monday in every month, and in such court to hear and determine all disputes and controversies between any persons residing in

Brothertown aforesaid, concerning any debt, demand or trespass where the sum due or damages sustained shall not exceed the sum of twelve dollars and fifty cents, and all actions for the recovery of the penalty of any bye-law to to be made at any town meeting in Brothertown as herein after mentioned; and it shall be lawful for either of the said keepers of the peace upon complaint made to him, to cause the person complained of to be summoned to appear at the next court to be held at the school house or other place appointed as aforesaid in Brothertown, to answer the complaint, and the said keepers of the peace or the major part of them shall at such next court or other court to which the cause may be adjourned, hear and examine the allegations and proofs of the parties and make such order and decree between them as shall appear to them to be just, and if such order and decree be not performed in one month thereafter, shall then cause the sum adjudged or decreed to either party to be levied by distress and sale of the goods and chattels of the party who shall be adjudged or decreed to pay the same, together with such fees as are herein after allowed to the marshal for executing the process, but the said keepers of the peace shall not take any fees for their services; and it shall be lawful for the said keepers of the peace to adjourn any cause depending before them to the next court, whenever they shall find it necessary; and if the defendant shall not be personally summoned upon the process against him, and shall not appear at the return thereof, a new summons shall be issued, but if he shall have been personally summoned, then the court may at the return of the summons proceed to hear and determine the cause whether the defendant appears or not, unless a reasonable excuse shall be offered, in which case they shall adjourn the cause to the next court, and the judgment of the said keepers of the peace or of the major part of them who shall attend upon the hearing of any cause shall be conclusive between the parties.

Their judgment conclusive.

XXIX. *And be it further enacted*, That if any person shall be convicted of any trespass or offence against any bye-law to be made as herein after mentioned before the said keepers of the peace or any three or more of them, and shall not have sufficient goods or chattels to pay the damages or penalty, the keepers of the peace before whom such conviction shall be had shall give a certificate thereof, setting forth that the defendant, naming him, is convicted of a trespass or breach of a bye-law in Brothertown, and is adjudged to pay a certain sum of money for the same to the plaintiff, mentioning the sum and the plaintiff's name, and that the defendant hath not sufficient goods and chattels in Brothertown to pay the same, and upon producing such certificate to the attorney for

If a person convicted of any trespass or offence have not sufficient goods & chattels to pay the sum awarded, a certificate thereof to be delivered to their attorney

Who shall issue a warrant to commit such person.

How executed and the expenses thereof paid.

Male inhabitants of Brothertown annually to hold town meetings to elect certain officers.

Vacancies how to be supplied.

And to make certain regulations and bye-laws.

the Brothertown Indians; and proving before him that the same was made or given by any three or more of the said keepers of the peace, the said attorney shall issue a warrant directed to the sheriff of the county and to some or one of the constables of the said county residing near Brothertown, commanding the said constable or constables to take such defendant, and convey him to the gaol of the said county and there deliver him to the said sheriff, and commanding the said sheriff to receive him into the said gaol and safely keep him there for the space of thirty days unless he shall sooner pay the said sum of money together with the fees for issuing and executing the said warrant, which thirty days shall be computed from the time the defendant shall be delivered to the sheriff or gaoler; and the said sheriff and his deputies and every constable to whom such warrant shall be directed are hereby required to execute the same, and all expenses of executing any such warrant and of supporting any such prisoner in gaol shall be paid by the said attorney of the Brothertown Indians, and the same shall be repaid to him by the said superintendants out of the money belonging to the Brothertown Indians.

XXX. *And be it further enacted*, That it shall be lawful for the male inhabitants of Brothertown of the age of twenty-one years and upwards, and they are hereby required to assemble together and hold town meetings at the said school house, on the first Tuesday of April in every year, at which meeting the senior keeper of the peace then present shall preside, and then and there to elect one town clerk, two overseers of the poor, two marshals and so many overseers of the highways as the majority of the inhabitants so met shall think necessary, who shall hold their respective offices for one year and until others shall be chosen in their places; and if any of the officers so chosen shall refuse to serve, or shall die or remove out of the town, or become incapable of serving before the next annual town meeting, then and in every such case another or others shall be elected in his or their places in the manner aforesaid at a town meeting to be held for that purpose; and the said inhabitants of Brothertown are hereby authorized at their annual town meeting or at any other town meeting to be held for that purpose, from time to time to make and establish such regulations and bye-laws as the majority of them so met may think necessary and convenient for the better relief of the poor, and for binding out children whose parents are dead or absent, and for ascertaining what bridges and what part of any highway each of the overseers of the highways shall have the care of, and which of the inhabitants shall be obliged to work on the highway, and how many days each of them shall work thereon, and for as-

certaining the sufficiency of fences, and the times, places and manner of preventing or permitting cattle, horses, sheep and swine or any of them to go at large, and for ascertaining damages done by trespasses, and for maintaining good order among themselves, and concerning any other matters relating to their own affairs, and to impose such penalties on the offenders against such regulations and bye-laws or any of them as the majority of the inhabitants so met shall deem proper, not exceeding five dollars for any one offence, to be recovered with costs by any inhabitant of Brothertown who shall sue for the same by action of debt before the said keepers of the peace or any three of them, the one half of which penalty when recovered shall be for the use of the person who shall sue for the same, and he shall pay the other half to the overseers of the poor of Brothertown to be by them applied to the relief of the poor; and that all such regulations and bye-laws shall be entered by the town clerk in a book to be provided for that purpose, and shall continue in force until revoked or altered by some subsequent town meeting, but no special town meeting shall be held for any purpose unless notice thereof signed by two or more of the said keepers of the peace, be fixed upon the door of the school house in Brothertown aforesaid at least six days before the day of holding such town meeting.

And to impose certain penalties.

How to be recovered and applied.

Such regulations and bye-laws to be entered in a book by the clerk.

How special town meetings shall be notified.

XXXI. *And be it further enacted*, That the said keepers of the peace shall be commissioners of the highways in Brothertown, and they or the major part of them shall have power from time to time to alter any highway in Brothertown, and to lay out others as there may be occasion, and to direct how and when the same or any of them or any part thereof shall be made, mended or repaired; *Provided always*, That all highways by them laid out shall be at least four rods wide, and they shall cause a record thereof to be entered by the town clerk of Brothertown; and the said overseers of the highways shall cause the highways and bridges of which they shall be respectively chosen overseers to be repaired and made according to the directions of the said commissioners, and shall warn the inhabitants to work thereon whenever it shall be necessary, and shall superintend and direct the same.

Keepers of the peace to be commissioners of highways, & their power and duty as such.

XXXII. *And be it further enacted*, That the marshals to be chosen in Brothertown as aforesaid shall have the like powers and authority there as constables of other towns in this state have by law in their towns, and shall be entitled to twelve and an half cents for serving every summons, and twenty-five cents for serving an execution for any sum not exceeding two dollars and fifty cents, and at the rate of ten cents in the dollar for serving every execution for any sum above two dollars and fifty cents.

Marshals to have the power of constables:

Their compensation.

The superintendants and attorney to determine all claims and controversies between the Brothertown Indians touching their lands;

Their determinations conclusive & to be entered in the clerk's book.

Overseers of the poor to be the guardians of infants who have no parents.

No Indian to sell any liquor without licence from the superintendants under a penalty.

How to be recovered and applied.

Town clerk to be supplied with books & paid by the superintendants.

Shinecock Indians in Suffolk county to hold town meetings.

And elect trustees.

Their power and duty.

XXXIII. *And be it further enacted,* That the said superintendants or the major part of them, or the said attorney of the Brothertown Indians if impowered by them for that purpose, shall from time to time settle all disputes and controversies between the Brothertown Indians concerning their said lands, and determine all claims to any of the said lands, and all disputes that may arise concerning the same upon the death of any Indian entitled to any land in Brothertown, and their determination shall be conclusive; and all determinations made by them or the major part of them relating to the said land, shall be entered by the town clerk of Brothertown in a book to be provided for that purpose.

XXXIV. *And be it further enacted,* That the overseers of the poor of Brothertown, shall be guardians of the persons and property of all infants in the said town who shall not have any parents there to take care of them.

XXXV. *And be it further enacted,* That it shall not be lawful for any Indian in Brothertown to sell any spirituous liquor without a licence from the said superintendants, under the penalty of seven dollars and fifty cents for every such offence, to be recovered before the said keepers of the peace or any three of them, the one half of such penalty shall be to the use of the Indian who shall sue for the same and the other half to the use of the poor of Brothertown.

XXXVI. *And be it further enacted,* That the said town clerk in Brothertown shall from time to time be supplied by the said superintendants with such books and paper as may be necessary for the execution of the duties enjoined on him by this act, and shall be paid by the said superintendants annually such sum for his services as they shall deem adequate.

XXXVII. *And be it further enacted,* That it shall be lawful for the male Indians above the age of twenty-one years belonging to the Shinecock tribe in Suffolk county, to meet together on the first Tuesday of April in every year, at the place for holding town meetings in the town of Southampton, and by plurality of voices annually to elect three persons belonging to the said tribe as trustees, who by and with the consent of three justices of the peace residing next to the lands of the said tribe, are hereby authorised and impowered from time to time to lease out so much of the said lands as they shall judge proper for the benefit of the said tribe and for any term not exceeding three years, and to lay out and appropriate such quantity of the said lands to each individual or family of the said tribe as they shall judge proper and necessary for his or their improvement, and also to order and direct on what part of the said lands fire wood and timber may be cut by the said tribe for their use; and it shall be the duty

of the clerk of the said town annually to attend and preside at such meeting of the said Indians, and to enter in a book by him to be kept for that purpose the names of the trustees to be chosen as aforesaid, and the proceedings of such trustees and justices; and if any person shall occupy or use any of the said lands without the consent of a majority of the said trustees and of a majority of such justices first obtained and entered in the said book, such person shall forfeit the sum of five dollars for every acre so used or occupied, and if any person belonging to the said tribe shall cut any wood or timber on the said lands without such order and consent of the said trustees and justices first entered in the said book, such person shall forfeit the sum of ten dollars for each offence, which penalties shall be sued for and recovered by such justices in their own names in any court having cognizance thereof with costs of suit, for the use of the said tribe.

Their proceedings to be entered in a book.

Penalty for occupying lands without the consent of a majority of the trustees;

And for cutting timber without such consent.

How to be recovered and applied.

XXXVIII. *And be it further enacted*, That the lands situate in the county of Oneida and heretofore granted to the secretary, the treasurer and the attorney general of this state and their successors in office in trust for Peter Otsequette and his posterity, shall continue to be held by them in trust as aforesaid, and they shall permit the issue of the said Peter Otsequette who is now deceased, during their natural lives and as long as any issue shall remain, to occupy and improve for their benefit so much of the said lands, not already let out or leased by them to any other person, as the said trustees shall from time to time think necessary for that purpose; and it shall be lawful for the said trustees from time to time to let out or lease any part of the said lands which shall be unoccupied or unimproved as aforesaid to any other persons upon such terms and conditions and for such time, not exceeding twenty-one years or three lives, as the said trustees may think proper; *Provided however*, That it shall not be lawful for the said trustees to make any lease in reversion of any part of the said lands, and the rent due or to become due upon any such lease already made or hereafter to be made, shall be paid into the treasury of this state, and upon the warrant of the comptroller shall by the treasurer be paid to the district attorney for the district in which the children or issue of the said Peter Otsequette reside, to be by him from time to time applied to the support and education of the said children or issue in such manner as shall appear to be most for their benefit; and the said district attorney shall once in every year account to the comptroller for the expenditure of all monies paid to him as aforesaid.

Lands held in trust for the posterity of Peter Otsequette how to be disposed of.

Proviso

Rents due thereon how to be paid and appropriated.

District attorney annually to account to the comptroller.

C H A P. CLV.

An ACT concerning the Proof of Deeds and Conveyances.

Passed 6th April, 1801.

All deeds or writings relating to real estates being acknowledged or proved may be recorded.

Before whom such acknowledgment or proof to be made.

Certificate thereof indorsed.

Where recorded.

No such acknowledgment or proof to be taken unless the officer has personal knowledge or satisfactory evidence of the identity of the grantor and witnesses.

Which shall be inserted in the certificate

No estate of a *feme covert* residing within this state to pass unless she be privately examined, &c.

Such examination not requisite where she resides out of this state.

I. **BE** it enacted by the People of the State of New-York, represented in Senate and Assembly, That every deed, conveyance or writing relating to the title or property of any lands or real estate within this state, being duly acknowledged by the party or parties executing the same or proved by one or more of the subscribing witnesses thereto, before one of the judges of the supreme court of the United States, or before one of the justices of the supreme court of this state, or a master in chancery, or the first judge of any court of common pleas, or before any other of the judges of the court of common pleas of the county where such lands or real estate are situated, or, if the same be situated in the cities of New-York, Albany or Hudson, before the mayor or recorder of the said cities, respectively, and a certificate of such acknowledgment or proof being indorsed thereon and signed by the person before whom the same was taken, shall and may be recorded in the office of the secretary of this state or of the clerk of the county in which such lands or real estate are situated; *Provided however*, That no such acknowledgment shall be taken unless the officer taking the same shall know or have satisfactory evidence that the person making such acknowledgment is the person described in and who has executed such deed, conveyance or writing; and that no such proof shall be taken unless the officer taking the same shall know the person making such proof or have satisfactory evidence that he is a subscribing witness to such deed, conveyance or writing, and that such witness knew the person who executed the same; all of which, shall be inserted in the said certificate of such acknowledgment or proof; and in case of the examination of witnesses it shall also be the duty of such officer to set forth in such certificate what witnesses were examined before him and the substance of the evidence by them given.

II. *And be it further enacted*, That no estate of a *feme covert* residing in this state shall pass by her deed, without a previous acknowledgment taken in manner aforesaid and made by her on a private examination apart from her husband, that she executed such deed freely without any fear or compulsion of her husband, which shall in like manner be contained in the certificate of such acknowledgment to be indorsed on such deed; but where any *feme covert* not residing in this state shall join with her husband in any deed or conveyance of or relating to any lands or real estate situated within this state, she shall thereby be barred of and from all claim of dower and all other right and title therein, in like manner as if she were sole, and

the acknowledgment or proof of such deed, conveyance or writing may be the same as if she were sole, and shall entitle such deed, conveyance or writing to be recorded as aforesaid.

III. *And be it further enacted*, That all acknowledgments and proofs of any deeds, conveyances or writings made as aforesaid by British subjects actually residing within the kingdom of Great-Britain or the dominions thereunto belonging, to any citizens of this state, of or concerning any lands or real estate situate within this state; taken or made or hereafter to be taken or made before the mayor of the city of London and duly certified under the seal of office of the mayoralty of the said city, or before any minister of the United States resident in Great-Britain, shall be of the like force and validity and entitle the same to be recorded as if the same were taken before a judge of the supreme court of this state.

Before whom deeds from British subjects may be acknowledged or proved.

IV. *And be it further enacted*, That every deed, conveyance or writing made and executed after the first day of February, in the year of our Lord one thousand seven hundred and ninety-nine, whereby the right or title to any lands or tenements situated in the several counties of Ontario, Steuben, Tioga, Herkimer, Oneida, Chenango and Otsego may be affected either in law or equity, after being acknowledged or proved as aforesaid, shall be recorded, if the same be not already done, in the clerk's office in the counties in which such lands shall be situated, in books to be provided by the clerks of the same counties respectively; and that every deed and conveyance made and executed after the said first day of February, whereby any of the said lands may be any way affected in law or equity, shall be adjudged fraudulent and void against any subsequent *bona fide* purchaser or mortgagee for valuable consideration, unless the same be recorded as by this act is directed before the recording the deed or conveyance under which such subsequent purchaser or mortgagee shall claim.

Deeds of lands situate within certain counties necessary to be recorded.

Otherwise void against subsequent purchasers & mortgagees.

V. *And be it further enacted*, That every deed, conveyance or writing, of or concerning any lands or real estate within this state, which by virtue of this act shall be entitled to be recorded as aforesaid, shall be recorded in the order and as of the time when the same shall be delivered to the secretary or any clerk for that purpose, and shall be considered as recorded from the time it was so delivered, and the said secretary or clerk shall make an entry on the margin of the record thereof, of the day, month and year and the time of the day when the same is so recorded, and indorse and sign a certificate on such deed, conveyance or writing of the particular time when and the book and page in which the same is so recorded; and that every deed, conveyance or writing so acknowledged or proved, whether

Duty of the secretary and clerk as to the order and time of recording deeds

Deeds so acknowledged or proved, or

the record thereof or transcript, may be read in evidence.

the same be recorded or not, or the record thereof or a transcript of such record certified by the secretary of this state, or the clerk in whose office the same may be recorded or registered under the seal of the court of common pleas of the county whereof he is clerk, may be read in evidence in any court of this state without further proof thereof.

No deed to be recorded unless so acknowledged or proved.

VI. *And be it further enacted*, That it shall not be lawful for the said secretary or any clerk of any city or county in this state, to record any deed, conveyance or writing above mentioned, unless the same shall be acknowledged or proved as is directed by this act, and which acknowledgment or proof shall be recorded therewith.

Penalty on officers for neglect or misdemeanor in executing the duties prescribed by this act.

VII. *And be it further enacted*, That if either of the said judges or other officers within this state authorized to take the acknowledgment or proof of deeds, or the said secretary, or any clerk of any county, or any deputy of such secretary or clerk, shall be guilty of any neglect, misdemeanor or fraudulent practice in the execution of the duties prescribed by this act, they and every of them shall in every such case be liable to pay treble damages with full costs of suit to any party injured thereby, to be recovered by action of debt or by information in any court of record in this state.

How to be recovered and applied.

Part of a former act repealed.

VIII. *And be it further enacted*, That so much of the act, entitled *An act for registering deeds and conveyances relating to the military bounty lands*, passed the 8th day of January, 1794, as provides for the acknowledgment or proof of deeds or conveyances in a manner different from the provision of this act, shall be and the same is hereby repealed so far as respects conveyances hereafter to be made.

C H A P. CLVI.

An ACT concerning Mortgages.

Passed 6th April, 1801.

Clerks of the respective counties to provide books for the registering of mortgages.

What parts of mortgages to be registered.

I. **B**E it enacted by the People of the State of New-York, represented in Senate and Assembly, That the clerks of the respective counties in this state from time to time, shall provide fit and convenient books for the registering of all mortgages of any lands, tenements or hereditaments situated within their respective counties; in which register shall be entered the names of the mortgagors and mortgagees, the dates of the respective mortgages, the mortgage money, the time or times when payable, the description and boundaries of the lands, tenements or hereditaments mortgaged, the times when such mortgages are registered and a minute of the the certificate of

the proof or acknowledgment thereof herein after mentioned, to which register all persons whomsoever at proper seasons may have recourse; and that if any clerk shall neglect or refuse to do the duty required of him by this act, he shall answer to the party injured all damages which shall happen by reason of such neglect or refusal.

Penalty for neglect.

II. *And be it further enacted,* That every mortgage being proved or acknowledged as deeds and conveyances are directed to be proved and acknowledged by the act, entitled *An act concerning the proof of deeds and conveyances*, and such proof or acknowledgment certified in like manner, may be registered as aforesaid in the city or county in which the lands, tenements or hereditaments so mortgaged are situated; and in case of several mortgages of the same premises or any part thereof, the mortgage or mortgages which shall be first registered as aforesaid, shall have preference in all courts of law and equity according to the times of the registry of such mortgages respectively; *Provided,* The mortgage or mortgages so to be preferred be made *bona fide* and upon good and valuable consideration; *And further,* that no mortgage, nor any deed, conveyance or writing in the nature of a mortgage, shall defeat or prejudice the title or interest of any *bona fide* purchaser of any lands, tenements or hereditaments, unless the same shall have been duly registered as aforesaid.

Mortgages how proved in order to be registered.

The first registered to have priority.

If made *bona fide*.

No mortgage to defeat a fair purchaser without being registered.

III. *And be it further enacted,* That every deed conveying a real estate, which by any other instrument or writing shall appear to have been intended only as a security in the nature of a mortgage, though it be an absolute conveyance in terms, shall be considered as a mortgage, and be deemed and adjudged to be liable to be registered as other mortgages are by virtue of this act; and that the person or persons for whose benefit such deed shall be made shall not have the advantages given by this act to mortgages, unless every instrument and writing operating as a defeazance of the same, or explanatory of its being designed to have the effect only of a mortgage or conditional deed, be also therewith registered in substance as in case of a mortgage.

Every deed appearing by any other writing to be intended as a mortgage, to be considered as such, and such writing to be registered therewith.

IV. *And be it further enacted,* That whenever any mortgage so registered shall be redeemed or discharged and a certificate thereof signed by the mortgagee or mortgagees, his or their executors, administrators or assigns, in the presence of two or more witnesses and proved or acknowledged in the same manner as the execution of such mortgage is above directed to be proved or acknowledged, and such proof or acknowledgment also certified in like manner, be produced to the clerk of the city or county in which the same is registered, such clerk shall enter in the said book or register of mortgages a minute of such dis-

When mortgages are redeemed how the registry thereof to be discharged.

charge and certificate, which minute shall be deemed and taken to be a full and absolute bar to the first entry of such mortgage or mortgages; and it shall not be necessary for the said clerk on entering such minute or on registering any mortgage as aforesaid to record or register at length the certificate of the proof or acknowledgment thereof.

No sale by virtue of a power contained in any mortgage to be defeated in favour of a person claiming the equity of redemption.

But the title of a mortgage or creditor accrued prior to such sale not affected thereby.

And this act not to secure any purchaser under a power executed by any person under 25 years of age.

Such powers to be acknowledged or proved and recorded,

And such sales to be at public auction.

V. *And be it further enacted*, That no sale of any lands, tenements or hereditaments made or to be made in due form of law by any mortgagee or others thereunto authorized by special power for that purpose, from any person entitled to the equity of redemption therein, shall be defeated to the prejudice of any *bona fide* purchaser thereof in favour or for the benefit of any person claiming such redemption in equity; *Provided*, That nothing herein contained shall be construed to prejudice any other mortgagee of the same premises or any part thereof, whose title accrued prior to such sale, or any creditor to whom the mortgaged premises or any part thereof were before bound by any judgment at law or decree in equity; *And provided also*, That nothing herein contained shall operate to secure any such purchaser under any power, executed since the nineteenth day of March, in the year one thousand seven hundred and seventy-five, or hereafter to be executed for the purpose of such sale, unless the party executing the same be of the age of at least twenty-five years.

VI. *And be it further enacted*, That all such powers to mortgagees made or to be made, authorising sales in fee, shall be acknowledged or proved and recorded, together with the certificate of such proof or acknowledgment, as deeds and conveyances usually are, before the conveyances for the sale be executed; *And further*, That every such sale shall be at public auction or vendue, and public notice shall be given thereof by advertisements, one copy whereof to be inserted and continued at least once a week for six months previous to such sale, in one of the public newspapers printed in this state, and another copy thereof to be fixed upon the outward door of the court house of the city or county in which the mortgaged premises or the greater part of them lie.

C H A P. CLVIII.

An ACT concerning the Inspection of Seal Leather.

Passed 6th April, 1801.

Inspectors of seal leather to be appointed in each of the cities.

I. **B**E it enacted by the People of the State of New-York, represented in Senate and Assembly, That the person administering the government of this state by and with

the advice and consent of the council of appointment, shall from time to time, and as often as vacancies occur, appoint inspectors of foal leather for the cities of New-York, Albany, Schenectady and Hudson respectively, to wit: Two for the said city of New-York, and one for each of the said cities of Albany, Schenectady and Hudson; and each inspector hereafter to be appointed, shall before he proceeds to execute the duties enjoined upon him by this act, take and subscribe before the mayor or recorder of the city for which such inspector may be appointed, the following oath, to wit:

"I do solemnly swear, that I will well, faithfully and impartially, according to the best of my skill and understanding, execute, do and perform the office and duty of an-inspector and examiner of foal leather, and will not directly or indirectly, by myself or by any person or persons under me, or for my benefit or advantage, buy or sell any foal leather, during the time that I shall continue an inspector of the same, except for the use of my own family, according to the true intent and meaning of an act, entitled "An act concerning the inspection of foal leather," so help me God."

Inspector's oath.

II. And be it further enacted, That no foal leather shall be sold or used for any purpose whatsoever within either of the said cities, whether such foal leather be manufactured within the same, or imported or brought therein from any other place whatsoever, except foal leather which shall have been inspected in one or other of the said cities, until the same shall have been inspected, sealed and weighed by one of the inspectors for that purpose appointed, under the penalty of five dollars for every such offence, to be sued for and recovered by action of debt with costs of suit, by any person who will sue for the same in any court having cognizance thereof, the one moiety thereof when recovered to be paid to the chamberlain of the city in which the offence was committed for the use of the poor thereof, and the other moiety to the use of the person so suing.

No foal leather to be sold or used in either of the said cities without inspection under a penalty.

How to be recovered and applied.

III. And be it further enacted, That there shall be paid to the inspector for inspecting, sealing and weighing of every side of foal leather, the sum of four cents, the one half to be paid by the seller and the other half by the purchaser.

Inspector's fees.

IV. And be it further enacted, That each inspector shall provide himself with proper seals for the purpose aforesaid, and impress on every side of foal leather, which shall be deemed dry, good and merchantable, his own name and the name of the city for which he is an inspector, at full length, and also the weight thereof; and if any person shall presume to counterfeit such mark or marks to be made by such inspector, by making any impression or mark on any foal leather, such person so offending shall forfeit

Each inspector to provide seals &c mark foal leather inspected.

Penalty for counterfeiting the same.

Bad leather
how to be used

To be marked
bad.

Inspectors to
keep instru-
ments for that
purpose.

Penalty for
using bad
leather for
certain pur-
poses.

The inspector
of Albany also
to inspect
leather in the
village of
Bath and the
towns of Wa-
tervliet and
Bethlehem.

and pay for every such offence the sum of twenty-five dollars, to be sued for, recovered and applied in manner aforesaid ; *Provided nevertheless*, That all foal leather which upon inspection as aforesaid shall be found not to be dry, good and merchantable, and which as such shall not be stamped in manner herein before directed, may be used for any other purposes, except being worked into shoes, boots or buckets ; *And provided further*, That all such foal leather which shall not on such inspection as aforesaid be deemed good and merchantable by the inspector, shall be by him marked with the word "BAD," and may then be used for any other purpose, except being worked into shoes, boots or buckets ; and every such inspector is hereby required and directed to keep proper instruments for the purpose of marking such unmerchantable leather accordingly ; and if any person shall presume to work up into shoes, boots or buckets, any foal leather, before the same shall have been inspected as aforesaid, or any foal leather, which shall be marked with the word "BAD" as aforesaid, such person so offending shall forfeit and pay for every such offence the sum of twenty-five dollars, to be sued for, recovered and applied in the manner before directed.

V. *And be it further enacted*, That it shall and may be lawful for the person who now is or hereafter shall be appointed inspector for the city of Albany, and it is hereby made his duty, upon the application of any of the tanners in the village of Bath in the county of Rensselaer, or the towns of Watervliet and Bethlehem in the county of Albany, to inspect in the said village and towns respectively, all such foal leather as they may offer for inspection, for the same fees as are paid in the city of Albany.

C H A P. CLXIV.

An ACT to lay a Duty on Strong Liquors, and for regulating Inns and Taverns.

Passed 7th April, 1801.

A commission-
er of excise to
be appointed
in the city of
New-York.

Who shall be
commissioners
in the several
towns.

I. **B**E it enacted by the People of the State of New-York, represented in Senate and Assembly, That it shall be lawful for the person administering the government of this state by and with the advice and consent of the council of appointment, from time to time, to appoint such person in the city of New-York as they shall think proper, to be the commissioner for collecting the duty of excise of and from the several retailers of strong or spirituous liquors in the said city ; and that the following persons shall be the commissioners for collecting the said duty in the several towns of this state, to wit : The supervisor of each town and any two justices of the peace resident

therein, or in case there shall not be two justices or they shall be absent, then such neighbouring justice or justices in the same county as the supervisor of such town shall notify and associate with him for that purpose.

II. *And be it further enacted*, That the several commissioners of excise within this state, except in the cities of New-York, Albany, Hudson and Schenectady, shall annually and immediately before they grant any licence to any person to keep an inn or tavern, or sell or retail strong or spirituous liquors, take and subscribe the following oath before one of the justices of the peace of the county in which they reside :

Commissioners in the several towns to take an oath :

" I one of the commissioners of excise for the town of in the county of do solemnly swear, in the presence of Almighty God, that I will not on any account or pretence whatsoever, grant any licence to any person within the said town of for the purpose of keeping an inn or tavern, except where it shall appear to me to be absolutely necessary for the benefit of travellers ; and that I will in all things, while acting as a commissioner of excise, do my duty according to the best of my judgment and ability, without fear, favour or partiality, agreeable to law."

Form.

And the person before whom such oath shall be taken and subscribed shall certify the day and year in which such oath was taken, and that the same was so taken and subscribed before him, on the back of the paper on which the same oath is so subscribed ; and the person taking and subscribing the same shall within ten days thereafter, send or deliver the same to the clerk's office of the town for which he so acts as a commissioner of excise, and the clerk of such town shall file the same among the papers in his said office ; and if any person who is hereby directed to take and subscribe such oath, shall presume to act as a commissioner of excise without having taken and subscribed the same, or if any such person shall neglect to return the same oath so subscribed and certified as aforesaid to the town clerk to be filed as aforesaid, within the time by this act limited, such person shall for every such neglect or refusal forfeit the sum of ten dollars, to be sued for and recovered with full costs of suit by any person who will prosecute for the same, before any justice of the peace of the county where such neglect or refusal shall happen, the one moiety of which sum when recovered shall be paid by the person so suing and receiving the same to the overseers of the poor of the town in which such neglect shall happen for the use of the said town, and the other moiety shall be for the use of the person so suing for the same.

Oath to be certified & filed in the clerk's office of the town.

Penalty for neglect.

How to be recovered and applied.

III. *And be it further enacted*, That it shall be lawful for the commissioners of excise in the several towns of this state, annually by writing under their respective

Commissioners annually to grant licences to retail

spirituous liquors.

How and to whom licences may be granted in the cities.

How and to whom in the several towns.

Proceedings therein to be filed in the office of the town clerk.

Commissioners to determine the sum to be paid for each licence, under certain limitations.

hands and seals, and in the several cities aforesaid annually in the manner directed by their respective charters or by any statute prescribing such manner therein, to grant to the several persons who shall reside in their respective cities or towns and apply for the same, a licence to retail strong or spirituous liquors under five gallons, which said respective licences shall continue in force from the time of granting the same until the first Tuesday of May next ensuing the date thereof, and no longer; *Provided always*, That no licence shall be granted in any of the said cities to retail strong or spirituous liquors for the purpose of keeping an inn or tavern, unless it shall appear to the commissioners thereof that an inn or tavern at the place at which such permit is applied for is necessary for the accommodation of travellers, and that the person applying for such licence is of good character, all of which shall be inserted in every such licence; *And provided further*, That no such licence shall be granted in any town of this state unless three commissioners shall be present at the granting thereof, of which three the supervisor of the town shall always be one, nor until they or a majority of them then so present have satisfactory evidence that the person who applies for such licence is of good moral character, and of sufficient abilities to keep an inn or tavern, and that he has accommodations to entertain travellers, and that an inn or tavern is absolutely necessary at the place where such person resides or proposes to keep such tavern, for the actual accommodation of travellers as aforesaid; all of which they or a majority of them are hereby directed to put in writing by way of a resolve of the said board and severally subscribe the same, and within twenty days thereafter shall return such resolve to the office of the town clerk of the town for which they are commissioners, who is hereby directed to file the same and deposit it among the other papers of such town; and that all licences obtained, except the aforesaid board of commissioners are so actually present at the granting of the same, shall be considered as absolutely void.

IV. *And be it further enacted*, That it shall be lawful for the commissioner of excise in the city of New-York to determine the sum which each person applying for a licence to retail strong or spirituous liquors under five gallons shall pay for the same, not being less than five dollars nor more than fifty dollars, as a duty of excise, which sum shall be paid to him by the person applying before the licence shall be issued as aforesaid, and that it shall also be lawful for the commissioners of excise in the city of Hudson and in the several towns in this state, to determine the sum which each person applying for a licence shall pay for the same, not being less than five dollars nor more than thirty dollars, as a duty of excise, which together

with the sum of seventy-five cents as a fee to the respective commissioners for granting such licence, shall be paid to them by the person applying for such licence before the same be issued as aforesaid ; and the said commissioners are required to keep an account of the persons to whom licences shall be granted, and of the sums by them paid therefor, and to file the same with the clerk of such city or town on or before the first day of March in every year, and shall from time to time without delay pay the monies so to be by them received as aforesaid to the overseers of the poor of the respective cities and towns for which they are commissioners, to be applied to the relief of the poor thereof.

And to keep accounts thereof, &c. and pay the same to the overseers of the poor.

V. *And be it further enacted*, That the commissioner of excise for the city of New-York shall be entitled for his services to the sum of two hundred and seventy-five dollars per annum, which it shall be lawful for him to retain out of the monies which may come into his hands from the duty of excise as aforesaid, and the residue thereof he shall from time to time and without delay pay to the chamberlain of the said city, to be applied for the payment of the contingent charges of the said city ; and that the said commissioner shall keep an account of the persons to whom licences shall be granted in the said city and of the sums by each of the said persons paid therefor, and file the same with the chamberlain of the said city on or before the last day of February in every year.

Compensation to the commissioner of New-York.

Who may retain the same and how to apply the residue & account therefor.

VI. *And be it further enacted*, That no person shall sell by retail any strong or spirituous liquors to be drank in his or her house, out house, yard or garden, unless such person shall appear before a justice of the peace of the county in which he or she shall reside, or if in either of the said cities before the mayor, or in his sickness or absence the recorder thereof, and enter into recognizance to the people of the state of New-York in the sum of one hundred and twenty-five dollars, conditioned that such person will not during the time that such person shall keep an inn or tavern, keep a disorderly inn or tavern, or suffer or permit any cock-fighting, gaming or playing with cards or dice, or keep any billiard table or other gaming table or shuffle board within the inn or tavern by him or her to be kept, or within any out house, yard or garden belonging thereunto, which recognizance so to be taken, shall be lodged by the person before whom the same shall be taken with the clerks of the respective cities or counties where the same shall be taken ; and if any person shall be convicted of an offence against this act, it shall be lawful for the courts of general sessions of the peace in the respective cities and counties in this state to suppress the licence of such offender ; but that no person who shall be licensed to retail strong liquors, not to be drank in his

All persons licensed to enter into a recognizance.

To be filed in the office of the clerk of the city or county.

The licence of offenders against this act may be suppressed.

What persons need not en-

ter into recognizance. or her house but carried elsewhere, shall be obliged to enter into recognizance as aforesaid.

Penalty on persons retailing liquors without licence or entering into recognizance.
VII *And be it further enacted,* That if any person shall sell by retail any strong or spirituous liquors without having such licence as aforesaid, or if any person shall sell any strong or spirituous liquors to be drank in his or her house, out house, yard or garden without having entered into such recognizance as aforesaid, every person who shall be guilty of either of the offences aforesaid, shall for each offence forfeit the sum of twenty-five dollars; *Provided always,* That no person shall be subject to be prosecuted by virtue of this act, for selling metheglin, currant wine, cherry wine or cider, to be by such person made, and which shall not be drank in his house, out house, yard or garden.

No person to be prosecuted for selling metheglin, &c. not to be drank in his house.

Gaming in an inn an offence against this act and how punished.

VIII. *And be it further enacted,* That it shall be deemed an offence against the people of this state, for any person who shall keep a public inn or tavern to permit or suffer any cock-fighting, playing with cards or dice, or to keep any billiard table or other gaming table or shuffle board within his or her house, or within any out house, yard or garden belonging thereto, or therein to permit any kind of gaming by lot or chance; and that every person convicted of any offence against this act shall be punished by fine and imprisonment, or either, at the discretion of the court in which any such conviction shall be had.

What accommodations innkeepers shall have.

IX. *And be it further enacted,* That every keeper of any public inn or tavern in this state, except in the city of New-York, shall keep in his house at least two spare beds for guests, with good and sufficient sheeting and covering for such beds respectively, and provide and keep good and sufficient stabling and provender of hay in the winter and hay or pasturage in the summer, and grain for four horses or other cattle more than his own stock, for the accommodation of travellers, upon pain of forfeiting for every neglect or default of having either of the articles in this clause before mentioned the sum of five dollars.

Penalty for neglect.

No person to be licensed to sell liquors to be drank in any merchant's store or house without also keeping an inn.

X. *And be it further enacted,* That no person shall have a licence to sell any strong or spirituous liquors to be drank in any store or house where merchant's goods are sold, unless such person shall also take at the same time a licence to keep an inn or tavern, and it shall appear necessary to the commissioners that an inn or tavern ought to be kept at such place for the actual benefit and accommodation of travellers as in other cases, nor unless such person shall actually keep the necessary spare bedding, stabling, hay and provender for horses, except in the city of New-York, and shall conform in all things to the rules prescribed by this act relative to the keepers of inns and taverns; and no strong liquors shall be sold by such person

on any pretence to be drank in the same room where such merchant's goods are sold.

XI. *And be it further enacted*, That if any innholder or tavern keeper shall sell any strong or spirituous liquors to any apprentice, servant or slave, knowing or having reason to suspect or believe him or her to be such, without the consent of his or her master or mistress, such innholder or tavern keeper shall forfeit and lose every debt which such apprentice, servant or slave shall contract for any such liquor, and also for every such offence forfeit the sum of five dollars, to be recovered with costs of suit by the master or mistress of such apprentice, servant or slave; *And further*, That the licence of every such innholder or tavern keeper shall be and hereby is declared void from the time of such conviction; and such innholder or tavern keeper shall be and is hereby declared to be incapable of receiving any further or other licence for holding any public inn or tavern for the space of three years from the time of such conviction.

Innkeepers selling liquors to servants to lose their debt and forfeit a penalty and their licence.

Penalty how recovered.

XII. *And be it further enacted*, That if any innholder or tavern keeper or any other person shall take or receive directly or indirectly from any such apprentice, servant or slave, any cloathing or any other goods, chattels, wares or merchandize in payment for any such strong or spirituous liquors, or in pawn or pledge to secure any such payment, and thereof be convicted by the oath of any one credible witness, such person so offending, besides the payment of the penalty and forfeiture of the debt as aforesaid, shall within three days after such conviction restore to the master or mistress of such apprentice, servant or slave all such cloathing or other property which such person shall have so taken or received from any such apprentice, servant or slave, or shall forfeit and pay unto the master or mistress of such apprentice, servant or slave double the value of the same, to be recovered by such master or mistress, his or her executors or administrators, with costs of suit in any court having cognizance thereof.

Forfeiture on receiving any goods in payment besides the above penalties.

How to be recovered.

XIII. *And be it further enacted*, That if any innholder or tavern keeper shall trust any person other than travellers above the sum of one dollar and twenty-five cents for any sort of strong or spirituous liquors or other tavern expences, he shall lose every such debt and be incapable of suing for the same or any part thereof; and if any such innholder or tavern keeper shall sue therefor, the person sued may plead this act in bar or give the same in evidence under the general issue, and if the plaintiff in such suit shall become nonsuit, or a verdict or judgment shall be given for the defendant, every such plaintiff shall pay double costs.

Innkeeper trusting any person other than travellers above a cert. in sum to lose the debt.

And in a suit therefor plaintiff liable to double costs

XIV. *And be it further enacted*, That if any innholder or tavern keeper shall take from any person trusted as

Securities taken for such

debts to be
void.

And every
person con-
victed thereof
to forfeit
double the
sum.

Proviso.

Every inn-
keeper to put
up a sign,

Under a pen-
alty.

Any person
not licensed
putting up a
sign to forfeit
the like penal-
ty.

Penalties un-
der this act
not otherwise
provided for
how to be re-
covered and
applied.

Offences
against this
act punishable
as misdemean-
ors.

A recovery
for a penalty
incurred shall
be a bar to any
recovery for
previous of-
fences.

aforesaid any note or other security in writing for any sum above one dollar and twenty-five cents for any strong or spirituous liquors sold or drank at his house as aforesaid, under pretence by which to evade this act, every such note or other writing shall be void; *And further,* That every person who shall be convicted of an offence against this clause of this act, shall forfeit double the sum mentioned in and intended to be secured by such note or other writing, to be recovered by action of debt or by information with costs of suit in any court having cognizance thereof; *Provided however,* That nothing herein contained shall be construed to debar any innholder or tavern keeper from taking or recovering any sum of money due to him from any person who may be a lodger in his house, or from travellers not residing in such city or town.

XV. *And be it further enacted,* That every innholder or tavern keeper shall within thirty days after obtaining his licence put up a proper sign on or adjacent to the front of his house with his name thereon, and keep such sign up during the time he shall keep an inn or tavern, under the penalty of one dollar and twenty-five cents for every month's neglect thereof; and that if any person who shall not have a licence as aforesaid shall erect or keep up such sign, he shall forfeit the like penalty of one dollar and twenty-five cents for every week such sign shall be so kept up.

XVI. *And be it further enacted,* That every penalty and forfeiture imposed by this act, may be recovered with costs of suit in any court having cognizance thereof by any person who will prosecute for the same to effect, unless this act has otherwise provided, the one moiety thereof, not by this act otherwise appropriated, shall when recovered be paid to the overseers of the poor of the city or town in which such offence shall happen, for the use of the poor thereof, and the other moiety to the person who shall sue for the same.

XVII. *And be it further enacted,* That all offences committed against any of the provisions of this act, shall be deemed and considered as misdemeanors, punishable by fine and imprisonment, or either of them, at the discretion of the court before which any conviction may be had.

XVIII. *And be it further enacted,* That whenever any suit shall be commenced and a recovery had for a penalty incurred by selling strong or spirituous liquors without licence, such recovery shall be a bar to all prosecutions for offences of the like nature committed before such recovery.

C H A P. CLXV.

An ACT for the more speedy Recovery of Debts to the Value of Twenty-Five Dollars.

Passed 7th April, 1801.

BE it enacted by the People of the State of New-York, represented in Senate and Assembly, That all actions of debt, detinue, account, covenant, trespass on the case, and trespass including trespass on any land or other real estate, wherein the sum or balance due, or damages or thing demanded shall not exceed twenty-five dollars, and also all penalties not exceeding the said sum imposed by the act, entitled *An act to lay a duty on strong liquors and for regulating inns and taverns*, and also all sums of money not exceeding the value of twenty-five dollars, to be sued for and recovered in any court of record by virtue of any statute of this state, shall be cognizable before any justice of the peace of any city or county, the city and county of New-York excepted; and every such justice is hereby authorized to hold a court for the trial of all such actions, and to hear, try and determine the same according to law and equity; and every justice in such court is hereby vested with all such power for the purpose aforesaid as is usual in courts of record in this state, and shall sign all process to be issued out of such court; *Provided always*, That no justice of the peace shall have cognizance as aforesaid of any action wherein the people of this state shall be concerned, or where the title of any lands shall in any wise come in question, except actions of trespass on land as aforesaid, nor of any action of assault, battery or imprisonment, or of slander or malicious prosecution, nor of matters of account where the sum total of the accounts of both parties exceeds in the amount or value thereof the sum of two hundred dollars, and that account proved to the satisfaction of the said court, nor of any action to be brought against any executor or administrator for any debt or demand due from the estate of any testator or intestate.

Actions cognizable before a justice of the peace.

Except in the city of New-York. To hold a court for that purpose and how to proceed.

Process as to certain actions.

II. *And be it further enacted*, That every such justice upon application to him made for the recovery of any such debt, damages or demand, shall issue a summons or warrant, as the case may require, directed to some constable or other proper officer of the city or town where the defendant dwells or can be found, commanding him, when a summons is issued, to summon the defendant to appear before such justice at a certain time and place in the same summons to be expressed, not less than six nor more than twelve days from the time of issuing such summons, to answer the plaintiff of the plea in the same summons to be mentioned, and when a warrant is issued, then commanding the constable or other officer to take the defendant and bring him or her forthwith before such justice to

Process by summons or warrant

appear on the day to which such adjournment shall be made, and in default of such appearance to pay the debt and costs, if judgment shall be given against such defendant, and for want of such security the justice shall proceed to trial without an adjournment.

In what cases and on what terms trial may be adjourned for the want of material evidence.

VIII. *And be it further enacted*, That in cases not provided for by the last section as aforesaid, if the defendant shall make oath that he cannot for want of some material testimony or witness safely proceed to trial, the justice shall in such cases postpone the trial for such reasonable time as will enable the defendant to procure such testimony or witness; *Provided*, That such time shall not exceed three months; *And provided also*, That such defendant, before he shall be entitled to have the trial postponed as aforesaid, shall give security to the said justice to appear and answer the said action, and to pay the debt and damages and costs in case judgment shall be given against him; *Provided also*, That in any action to be brought by virtue of this act, by warrant or otherwise, if either the plaintiff or defendant shall request an adjournment, he shall not be entitled thereto unless the party requesting such an adjournment, after having seen the account or demand of the adverse party, shall if required exhibit his or her account or demand, or state the nature thereof as far forth as may be in his or her power, to the satisfaction of the justice before whom the cause is to be tried.

The defendant shall set off his account, if any, against the demand of the plaintiff.

IX. *And be it further enacted*, That if the defendant in any action to be brought by virtue of this act, hath any account or demand against the plaintiff, he may plead and set off the same against the debt or demand of the plaintiff, and if any defendant shall neglect or refuse so to do, such defendant shall for ever thereafter be precluded from having any action against the plaintiff to recover the same or any part thereof; *Provided always*, That where the balance found to be due to the defendant shall exceed twenty-five dollars, in such case the defendant shall not be precluded from recovering the same account or demand against the plaintiff in any other court of record having cognizance thereof.

Unless the balance exceeds 25 dollars.

Proceedings on a plea of title.

X. *And be it further enacted*, That when in any action of trespass on any land or other real estate, any defendant shall justify on a plea of title, the defendant shall commit such plea of justification to writing, and having signed the same in the presence of such justice, shall deliver such plea to the justice who shall then countersign the same and deliver it to the plaintiff, and that it shall and may be lawful to and for such plaintiff to commence and prosecute an action for such trespass against such defendant in the court of common pleas of the county in which such trespass shall have been committed, and if such plaintiff shall recover any damages in such action, the defendant

same shall be absent or unable to hear and try the cause, it shall and may be lawful for the constable serving such warrant to carry the defendant before the next justice of the city or county where the justice who issued the warrant shall reside, and such other justice shall take cognizance of, and hear, try and determine the cause in the same manner as he could or might have done if he had issued the warrant by virtue of which the defendant shall be taken, but in all other cases where any process shall be issued in pursuance of this act, and served on the defendant for any debt, damages or demand of what nature soever, the cause shall be tried before the justice who first issued such process, and not before any other justice.

unable to try the cause, the next justice may try it.

In other cases the same justice shall try the cause.

V. *And be it further enacted*, That if any plaintiff or his or her attorney so applying for process, shall prove upon oath to the satisfaction of the justice that if such process be by summons against any such freeholder or inhabitant having a family, the plaintiff will be in danger of losing his debt or demand thereby, or doth really and sincerely believe that such freeholder or inhabitant will depart the city or county wherein he or she doth reside, then the justice shall issue a warrant in such manner as is above directed; *And further*, That where the plaintiff in any action aforesaid shall be a non-resident of the county, and shall give security to pay the debt or damages and costs of suit in case judgment shall be given against him, then such plaintiff may also have a warrant returnable immediately.

Plaintiff proving that there is danger of losing his debt entitled to a warrant in all cases.

Non-resident plaintiff also entitled to a warrant on giving security.

VI. *And be it further enacted*, That no person shall be proceeded against by summons out of the city or county where he or she does reside; and that where any parties shall agree to enter an action before any justice without any process, the justice shall proceed to trial in the same manner as if a summons or warrant had issued.

No summons to issue against a person out of the county where he resides.

VII. *And be it further enacted*, That where a warrant shall be issued for a non-resident plaintiff as aforesaid, the justice before whom the cause is to be tried shall not adjourn the same for more than three days unless the parties agree to allow a longer time; and in all other cases where a warrant shall be issued, if the plaintiff or defendant shall require a longer time than is at first appointed by the court to try the said cause, and will if required give sufficient security to appear and stand trial on such other day as shall be appointed, then the justice is hereby empowered and required to adjourn the trial of such cause to any day he shall judge most convenient, not exceeding twelve days nor less than three days, unless the justice and parties shall otherwise agree; *Provided always*, That if any adjournment be made without the consent of the plaintiff in any case where a warrant shall be issued as aforesaid, the defendant shall give sufficient security to

On a warrant for a non-resident plaintiff, trial not to be adjourned for more than 3 days without consent. In other cases where a warrant shall be issued trial may be adjourned at the instance of either party on giving security.

horses or other cattle more than his or her own stock, for the accommodation of travellers, according to the form of the act, entitled "An act to lay a duty on strong liquors and for regulating inns and taverns," or, of having on the day of last (or, instant) at in the said city (or, county) sold one gill (or other quantity) of rum (or other strong liquors) to an apprentice (or servant, or, slave) of knowing or having reason to suspect or believe him (or, her) to be such, without the consent of his (or, her) master (or, mistress,) against the form of the act, entitled "An act to lay a duty on strong liquors and for regulating inns and taverns," (or, of having for the space of one month (or, two or more months) neglected to put up and keep such sign up, as is required by the act, entitled "An act to lay a duty on strong liquors and for regulating inns and taverns.") Given under my hand and seal, the day and year first above written."

Such convictions to be filed in the office of the clerk of the county.

Actions in pursuance of this act may be tried by jury.

Venire to be issued to summon twelve jurors.

Six of them to be balloted for the trial.

And every such conviction shall within thirty days after it is made, be filed in the office of the clerk of the city or county where the offence was committed, there to remain as a record, and may be pleaded in bar to any other prosecution for the same offence.

XII. *And be it further enacted*, That in every action to be brought by virtue of this act, it shall be lawful for either of the parties to the suit or the attorney of either of them after issue joined and before the court shall proceed to inquire into the merits of the cause, to demand of the said court that such action be tried by a jury; and upon such demand the said justice holding such court is hereby required to issue a *venire*, directed to any constable of the city or town where the said cause is to be tried, commanding him to summon twelve good and lawful men being freeholders or freemen of such city or being freeholders of such town where the said cause is to be tried, and who shall be in no wise of kin to the plaintiff or defendant, nor interested in such suit, to be and appear before such justice issuing such *venire*, at such time and place as shall be expressed in such *venire*, to make a jury for trial of the action between the parties mentioned in the said *venire*; which constable shall at the return of the said *venire*, return a panel of the names of the jurors he shall so summon by virtue thereof, and the name of each person so impanelled shall be written on several and distinct pieces of paper, as nearly of one size as may be, and shall be delivered to the said justice before whom such action is to be tried, by the constable returning such panel, and shall by the said constable be rolled up all as near as may be in one and the same manner, and put together in a box or some convenient thing, and on the trial of such cause such justice or such indifferent person as he shall appoint for that purpose, shall draw out six of the said papers one

after another, and if any of the persons whose names shall be so drawn shall not appear, or shall be challenged and set aside, then such further number thereof shall be drawn as shall make up the number of six who do appear, after all legal causes of challenge allowed by the said justice, unless the parties agree that the said constable shall summon six men at his discretion; and the said six persons so first drawn and appearing, and approved by the court as indifferent, shall be the jury who shall try the cause, to each of whom the said justice shall administer the following oath:

Challenges allowed.

Parties may agree that the constable summon six jurors at his discretion.

"You do swear in the presence of Almighty God, that you will well and truly try the matter in difference between plaintiff and defendant, and a true verdict will give according to evidence."

Juror's oath.

And after the said jury have taken the oath aforesaid, they shall sit together, and hear the several proofs and allegations of the parties which shall be delivered in public in their presence; and to each of the witnesses on the said trial the justice shall administer the following oath, viz.

"You do swear in the presence of Almighty God, that the evidence you shall give in this matter in difference between plaintiff and defendant, shall be the truth, the whole truth, and nothing but the truth."

Witnesses' oath.

And after hearing the proofs and allegations, the jury shall be kept together in some convenient place until they all agree upon a verdict, and for which purpose a constable shall be sworn, and to whom the said justice shall administer the following oath, viz.

Jury to be kept together until they have agreed on their verdict.

"You do swear in the presence of Almighty God, that you will to the utmost of your ability, keep every person sworn on this inquest together in some private and convenient place, without meat or drink, except water; you will not suffer any person to speak to them nor speak to them yourself, unless by order of the justice, unless it be to ask them whether they have agreed on their verdict, until they have agreed on their verdict."

Constable's oath.

And when the jurors have agreed on their verdict, they shall deliver the same to the justice in the same court, who is hereby required to give judgment thereupon, and to award execution in manner hereafter directed; *Provided always*, That no oath of either party or *ex parte* affidavit of any other person shall be allowed or given in evidence in any such action, unless the parties agree to allow of such evidence.

Judgment to be given on the verdict.

No *ex parte* oath to be admitted without consent.

XIII. *And be it further enacted*, That every person summoned and drawn as a juror or subpoenaed as a witness, who shall not appear, or appearing shall refuse to serve or give evidence in such action, shall forfeit and pay for every such default or refusal, unless some reasonable cause be proved on oath to the satisfaction of the said court,

Penalty on defaulting jurors and witnesses.

such fine or fines, not exceeding the sum of ten dollars nor less than sixty-two and an half cents, as the said court shall think reasonable to impose; and the said court is hereby authorized and required to issue a warrant to any constable to levy the same of the goods and chattels of the offender, and for want thereof to take and convey him or her to the gaol of the city or county wherein the offence shall have been committed, there to remain until he or she pay such fine together with the costs attending the same; and the keeper of such gaol is hereby commanded to keep such offender in safe custody in such gaol until such fine together with the costs shall be paid; *Provided always*, That no such fine or fines shall be imposed unless oath shall first have been made before the court by some credible person, that such juror or witness so in default hath been lawfully summoned or subpoenaed as aforesaid; all and every of which said fines when recovered shall be delivered by the said court to the overseers of the poor, for the use of the poor of the city or town where the same shall be levied.

Proviso.

How to be applied.

Costs how to be awarded and debt and damages levied and paid.

XIV. *And be it further enacted*, That if the plaintiff in any such action shall be nonsuited, or discontinue or withdraw his action without the consent of the defendant, then judgment shall be given against such plaintiff for the costs accrued; or if he shall be found to be indebted to the defendant, then judgment shall be given against him for the debt or damages and costs, as the case may require; and whenever judgment shall be given against either plaintiff or defendant, the said court shall grant execution thereupon directed to one of the constables of the city or town where the party dwells or can be found, commanding him to levy the debt or damages and costs of the goods and chattels of the person against whom such execution shall be granted, his arms and accoutrements excepted, and to bring the money at a certain time and place therein to be mentioned before the justice who issued the execution, to render to the party who recovered the same; and if no goods or chattels can be found or not sufficient to satisfy such execution, the party recovering the judgment may from time to time renew such execution, or have further execution against the goods and chattels of the party against whom such judgment is recovered, or may bring an action of debt thereon; or if the party against whom such judgment is recovered be a freeholder within this state, or being a person not having a family therein, and the same be proved to the satisfaction of the justice by the oath of the party in whose favour such execution shall issue, or by the oath of such witnesses as the justice shall require, or if the judgment be against any person whatever for any penalty incurred under the act, entitled *An act to lay a duty on strong liquors and for regulating inns and taverns*, then

every execution to be issued as aforesaid may further command, that if sufficient goods and chattels cannot be found to satisfy the debt or damages and costs as aforesaid, that the officer take the body of the person against whom such execution shall be granted, and him or her convey to the gaol of such city or county ; *Provided always*, That no such proof of any such party against whom judgment shall be given being a freeholder or a person not having a family, shall be required by any such justice unless such party shall at the time of the trial of any such action or sometime before the issuing execution, not exceeding four days after such trial, claim and alledge his exemption from any such execution against his body ; *And further*, That no execution of any judgment given by virtue of this act, shall issue against any freeholder or inhabitant having a family in less than thirty days after giving the said judgment, unless the party in whose favour judgment shall be given shall make it appear to the satisfaction of the said justice on his own oath or the oath of some other person, that such plaintiff will be in danger of losing the debt or damages if such delay be allowed ; in which case the said justice shall issue execution immediately as herein before directed, unless the party against whom such judgment shall be given shall thereupon give security to the party in whose favour judgment was given, that he will pay the debt or damages and costs before or surrender himself in execution, if liable to be imprisoned on execution by virtue of this act, at the expiration of thirty days.

Constable how
to proceed on
executions.

XV. *And be it further enacted*, That the constable after taking such goods and chattels into his custody by virtue of such execution, shall immediately give public notice by an advertisement signed by himself and put up at three public places in such city or town where such goods and chattels shall be taken, of the time and place when and where they will be exposed to sale, at least five days before the time appointed for selling them, and therein describe the goods and chattels so taken, and at the time and place so appointed for selling them shall expose them to sale at public vendue to the highest bidder, and pay the debt or damages and costs levied to the justice who issued the execution, returning the overplus, if any, to the owner ; and for want of goods and chattels whereon to levy, the said constable shall according to the tenor of the said execution, take the body of the person against whom the same execution shall be granted, and convey and deliver him or her to the keeper of the common gaol of the city or county, and in case the person against whom such execution shall issue be a freeholder, such keeper is hereby commanded to keep such person in safe custody in the common gaol aforesaid until the debt or damages with costs shall be fully paid ; and in case any

When liable
for the amount
the of execu-
tion.

such person be not a freeholder, and the same be certified or a memorandum thereof made by such justice upon such execution, whose duty it shall be so to do, then until the expiration of thirty days from the time of receiving such person; and in case such constable to whom any execution shall be delivered shall not within twenty days after receiving such execution, levy the same on the goods and chattels of the person against whom such execution shall be granted, and in ten days thereafter pay the debt and costs so levied into the hands of the justice who issued the same, or in case of his death or removal from office, to the person in whose favor the execution was granted; or if no goods or chattels can be found whereon to levy, then if the said constable shall not, if such execution require it, take the body of the person against whom such execution was granted, if to be found, within thirty days from the receipt of such execution as aforesaid, then and in every such case the said constable shall be holden to pay the amount of such execution, to be recovered by an action of debt with costs by the person in whose favour such execution was granted, in which case execution shall issue forthwith against such constable.

When process
shall issue to a
constable of an
adjoining
town.

XVI. *And be it further enacted*, That where in any city or town no constable shall be chosen or appointed, or the constable be absent, or where a process shall be issued against such constable of any city or town, that then and in such case, the justice upon application made shall and may direct the process or execution to the constable of the next adjoining town living nearest where the defendant dwells or can be found, who is hereby required to execute the same; and that when any process shall be issued by any justice by virtue of this act, the constable of the city or town to whom such process shall be directed, shall proceed agreeable to this act and execute such process in his own proper person, unless the justice who issued such process shall at the request of the plaintiff judge it expedient to depute some other proper person, who will voluntarily undertake to execute the same without fee or reward; but no person shall be so deputed to impanel or summon any jury.

Constable to
execute pro-
cess in person,

Unless the
justice depute
some other
person.

Constables
may execute
process in any
city or town
in their coun-
ty.

How to pro-
ceed against
joint debtors.

XVII. *And be it further enacted*, That it shall be lawful for any constable to execute any summons or precept issued by virtue of this act in any city or town in the county in which the same was issued.

XVIII. *And be it further enacted*, That every summons or warrant to be issued by virtue of this act, may issue against any joint debtors in the same manner as against individual debtors, and in case the same be duly served in manner herein before directed, upon either of such joint debtors, such joint debtor on whom the same shall be so served shall answer to the plaintiff, and the judgment shall

in such case be against the joint debtor or debtors on whom the same was so served, and against the other joint debtor or debtors named in such summons or warrant, in the same manner as if such process had been duly served on all such debtors ; *Provided however*, That no execution shall issue against the body or against any goods and chattels the sole property of any debtor on whom process was not duly served as aforesaid.

XIX. *And be it further enacted*, That no judgment, order or proceeding whatsoever to be had or made by virtue of this act shall be removed by any writ of error or false judgment ; *And further*, That no justice of the supreme court shall allow any *certiorari* or other process to remove the same, unless the party applying for such *certiorari*, shall within thirty days after such judgment given make affidavit satisfying such justice of the supreme court, that there is reasonable cause for granting such *certiorari* for error in such judgment, which shall be particularly specified in the said affidavit, and which affidavit may be made before one of the justices of the supreme court, or one of the judges of the court of common pleas of the county where such judgment shall be given, or before one of the commissioners for taking affidavits to be read in the supreme court ; and such affidavit shall be left with the justice of the supreme court who may allow such *certiorari*, in order that the adverse party may obtain a copy thereof ; and if any *certiorari* or other writ shall be granted or issued otherwise than is above mentioned, the same shall be void ; *And further*, That no execution upon any judgment to be given by virtue of this act, shall be prevented or stayed by any *certiorari* or other writ, in case the party in whose favour such judgment shall be given shall give such security as may be satisfactory to the justice by whom such judgment shall be given, to restore the debt or damages for which such judgment shall be obtained, with the interest and costs in case the same shall be reversed ; and if any such judgment be removed into the supreme court and be there confirmed, then the party procuring such *certiorari* shall pay to the adverse party all costs of defending such suit in the supreme court, and the party entitled to such costs shall and may have execution for the same out of the said supreme court, against the body or goods and chattels of the party who ought to pay the same ; but if such judgment shall be reversed, then the party procuring such *certiorari* shall in like manner recover his or her costs ; *Provided always*, That in all cases of judgments removed by *certiorari* as aforesaid, the supreme court shall proceed and give judgment according as the very right of the case shall appear, without regarding any imperfection, omission or defect in the proceedings before the court below in mere matters

No writ of error or false judgment to issue.

Certiorari how obtained.

Not to stay execution if the party gives security to refund.

Costs on affirmation or reversal of such judgment how recovered.

Supreme court to proceed according to the substantial right of the case.

Statute of
jeofails, appli-
cable to pro-
ceedings un-
der this act.

of form ; and that so much of the act, entitled *An act concerning amendments and jeofails*, as may be applicable shall be deemed at all times to apply as fully to judgments and proceedings under this act as to judgments and proceedings in any other court of record in this state.

Justices being
members of
the legislature
may or may
not officiate
under this act
at their dis-
cretion.
Who may not
try causes
under this act.

XX. *And be it further enacted*, That nothing herein contained shall extend to oblige any justice of the peace, being a member of the senate or assembly, or any judge of any county court, to take cognizance of any action by virtue of this act, but that they shall be at liberty at all times to act therein or not at their discretion ; and no justice of the peace being an inn or tavern keeper, or living in a house in which a tavern is kept, and no aldermen of the city of Albany shall try any cause by virtue of this act.

Costs allowed.

XXI. *And be it further enacted*, That no greater or other costs shall be allowed or taken in actions brought by virtue of this act than the following : Justices fees, a summons nine cents, a warrant twelve and an half cents, judgment twelve and an half cents, administering every oath six cents, *subpoena* for each witness six cents, issuing the *venire facias* to summon a jury nineteen cents, swearing the jury twelve and an half cents, every execution nineteen cents ; every witness attending and sworn twelve and an half cents ; constable or other proper officer for serving a warrant or summons notifying the plaintiff to trial or serving an execution, mileage for one mile or under twelve and an half cents, for every mile more six cents ; *Provided*, That on all precepts to be issued by virtue of this act the fees for serving be computed only from the place of abode of the defendant or where he shall be found to the place where the precept is returnable ; serving every execution for every dollar five cents, summoning every jury thirty-seven and an half cents ; jurors fees for all causes tried twelve and an half cents each, when summoned and attending and not trying the cause six cents each ; to the constable or other person serving *subpoena* twelve and an half cents for each witness ; *Provided*, That the whole costs to be recovered or allowed in any action, shall not exceed the sum of five dollars.

Persons
brought be-
fore a justice
on a warrant
to be kept in
the custody of
the constable
until dis-
charged.

XXI. *And be it further enacted*, That in all cases when any person or persons shall be brought before any justice of the peace on any warrant by virtue of this act, it shall be the duty of the constable to take the charge of the defendant or defendants until discharged by such justice.

C H A P. CLXVI.

An ACT to organize the Militia of this State.

Passed 7th April, 1801.

WHEREAS by the constitution of the United States, the congress has power to provide for organizing, arming and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states respectively the appointment of the officers: and the authority of training the militia according to the discipline prescribed by congress; *And whereas*, The congress did on the eighth day of May, one thousand seven hundred and ninety-two, pass an act, entitled *An act more effectually to provide for the national defence by establishing an uniform militia throughout the United States*, which act is in the words following, viz :

Preamble reciting an act of congress.

" I. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That each and every free able bodied white male citizen of the respective states, resident therein, who is or shall be of the age of eighteen years and under the age of forty-five years, except as is herein after excepted, shall severally and respectively be enrolled in the militia by the captain or commanding officer of the company within whose bounds such citizen shall reside, and that within twelve months after the passing of this act; and it shall at all times hereafter be the duty of every such captain or commanding officer of a company to enrol every such citizen as aforesaid and also those who shall from time to time arrive at the age of eighteen years, or being of the age of eighteen years and under the age of forty-five years, except as before excepted, shall come to reside within his bounds, and shall without delay notify such citizen of the said enrolment by a proper non-commissioned officer of the company, by whom such notice may be proved; that every citizen so enrolled and notified, shall within six months thereafter provide himself with a good musket or firelock, a sufficient bayonet and belt, two spare flints and a knapsack, a pouch with a box therein to contain not less than twenty-four cartridges suited to the bore of his musket or firelock, each cartridge to contain a proper quantity of powder and ball, or with a good rifle, knapsack, shot pouch and powder horn, twenty balls suited to the bore of his rifle and a quarter of a pound of powder, and shall appear so armed, accoutred and provided when called out to exercise or into service, except that when called out on company days to exercise only he may appear without a knapsack; that the commissioned officers shall severally be armed with a sword or hanger and esponton; and that from and after five years from the passing of this act, all muskets

Act of congress. Every male citizen between certain ages to be enrolled.

How to be armed and accoutred.

for arming the militia as herein required shall be of bore sufficient for balls of the eighteenth part of a pound ; and every citizen so enrolled and providing himself with the arms, ammunition and accoutrements required as aforesaid, shall hold the same exempted from all suits, distresses, executions or sales for debt or for the payment of taxes.

Executive of-
ficers and oth-
ers exempted.

II. *And be it further enacted*, That the vice-president of the United States, the officers judicial and executive of the government of the United States, the members of both houses of congress and their respective officers, all custom house officers with their clerks, all post officers and stage drivers who are employed in the care and conveyance of the mail of the post office of the United States, all ferrymen employed at any ferry on the post road, all inspectors of exports, all pilots, all mariners actually employed in the sea service of any citizen or merchant within the United States, and all persons who now are or may hereafter be exempted by the laws of the respective states, shall be and are hereby exempted from militia duty, notwithstanding their being above the age of eighteen and under the age of forty-five years.

Militia how
to be arrang-
ed,

III. *And be it further enacted*, That within one year after the passing of this act, the militia of the respective states shall be arranged into divisions, brigades, regiments, battalions and companies as the legislature of each state shall direct ; and each division, brigade and regiment shall be numbered at the formation thereof, and a record made of such numbers in the adjutant general's office in the state ; and when in the field or in service in the state, each division, brigade and regiment shall respectively take rank according to their numbers, reckoning the first or lowest number highest in rank ; that if the same be convenient each brigade shall consist of four regiments, each regiment of two battalions, each battalion of five companies, each company of sixty-four privates ; that the said militia shall be officered by the respective states, as follows : To each division one major general and two aids-de-camp, with the rank of major ; to each brigade one brigadier general, with one brigade inspector to serve also as a brigade major, with the rank of a major ; to each regiment one lieutenant colonel commandant, and to each battalion one major ; to each company one captain, one lieutenant, one ensign, four serjeants, four corporals, one drummer and one fifer or bugler ; that there shall be a regimental staff to consist of one adjutant and one quarter master to rank as lieutenants, one pay master, one surgeon and one surgeon's mate, one serjeant major, one drum major and one fife major.

And by whom
officered.

Each Battal-
ion to have
one company
of grenadiers

IV. *And be it further enacted*, That out of the militia enrolled as is herein directed, there shall be formed for each battalion at least one company of grenadiers, light

infantry or riflemen, and that to each division there shall be at least one company of artillery and one troop of horse; there shall be to each company of artillery, one captain, two lieutenants, four serjeants, four corporals, six gunners, six bombardiers, one drummer and one fifer; the officers to be armed with a sword or hanger, a fusée, bayonet and belt, with a cartridge box to contain twelve cartridges, and each private or matross shall furnish himself with all the equipments of a private in the infantry, until proper ordnance and field artillery is provided; there shall be to each troop of horse, one captain, two lieutenants, one cornet, four serjeants, four corporals, one fadler, one farrier and one trumpeter; the commissioned officers to furnish themselves with good horses of at least fourteen hands and an half high, and to be armed with a sword and pair of pistols, the holsters of which to be covered with bears-skin caps; each dragoon to furnish himself with a serviceable horse, at least fourteen hands and an half high, a good saddle, bridle, mail-pillion and valise, holsters and a breast plate and crooper, a pair of boots and spurs, a pair of pistols, a sabre, and a cartouch box to contain twelve cartridges for pistols; that each company of artillery and troop of horse shall be formed of volunteers from the brigade, at the discretion of the commander in chief of the state, not exceeding one company of each to a regiment nor more in number than one eleventh part of the infantry, and shall be uniformly clothed in regimentals to be furnished at their own expence, the colour and fashion to be determined by the brigadier commanding the brigade to which they belong.

or &c. and each division one company of artillery.

Officers how to be armed.

Troops of horse how officered.

The artillery and horse how to be formed.

Uniformly clad at their own expence.

V. *And be it further enacted*, That each battalion and regiment shall be provided with the state and regimental colours by the field officers, and each company with a drum and fife or bugle-horn by the commissioned officers of the company, in such manner as the legislature of the respective states shall direct.

Colours, &c. and by whom to be furnished.

VI. *And be it further enacted*, That there shall be an adjutant general appointed in each state, whose duty it shall be to distribute all orders from the commander in chief of the state to the several corps, to attend all public reviews when the commander in chief of the state shall review the militia or any part thereof, to obey all orders from him relative to carrying into execution and perfecting the system of military discipline established by this act, to furnish blank forms of different returns that may be required and to explain the principles on which they should be made, to receive from the several officers of the different corps throughout the state returns of the militia under their command, reporting the actual situation of their arms, accoutrements and ammunition, their delinquencies and every other thing which relates to the

An adjutant general in each state. His duty.

general advancement of good order and discipline ; all which the several officers of the divisions, brigades, regiments and battalions are hereby required to make in the usual manner, so that the said adjutant general may be duly furnished therewith, from all which returns he shall make proper abstracts, and lay the same annually before the commander in chief of the state.

Rules of discipline.

VII. *And be it further enacted*, That the rules of discipline approved and established by congress in their resolution of the 29th of March, one thousand seven hundred and seventy-nine, shall be the rules of discipline to be observed by the militia throughout the United States, except such deviations from the said rules as may be rendered necessary by the requisitions of this act or by some other unavoidable circumstances ; it shall be the duty of the commanding officer at every muster, whether by battalion, regiment or single company, to cause the militia to be exercised and trained agreeably to the said rules of discipline.

Officers how to take rank.

VIII. *And be it further enacted*, That all commissioned officers shall take rank according to the date of their commissions, and when two of the same grade bear an equal date then their rank to be determined by lot to be drawn by them before the commanding officer of the brigade, regiment, battalion, company or detachment.

Provision for the wounded.

IX. *And be it further enacted*, That if any person, whether officer or soldier, belonging to the militia of any state and called out into the service of the United States, be wounded or disabled while in actual service, he shall be taken care of and provided for at the public expence.

Duty of the brigade inspector.

X. *And be it further enacted*, That it shall be the duty of the brigade inspector to attend the regimental and battalion meetings of the militia composing their several brigades during the time of their being under arms, to inspect their arms, ammunition and accoutrements, superintend their exercise and manœuvres and introduce the system of military discipline before described throughout the brigade agreeable to law and such orders as they shall from time to time receive from the commander in chief of the state, to make returns to the adjutant general of the state at least once in every year of the militia of the brigade to which he belongs, reporting therein the actual situation of the arms, accoutrements and ammunition of the several corps, and every other thing which in his judgment may relate to their government and the general advancement of good order and military discipline ; and the adjutant general shall make a return of all the militia of the state to the commander in chief of the said state, and a duplicate of the same to the president of the United States.

And whereas, sundry corps of artillery, cavalry and infantry now exist in several of the said states, which by the laws, customs or usages thereof have not been incorporated with or subjected to the general regulations of the militia;

Artillery, &c.
now existing.

XI. Be it further enacted, That such corps retain their accustomed privileges, subject nevertheless to all other duties required by this act, in like manner with the other militia."

To retain
their privi-
leges.

AND WHEREAS, The reservations contained in the said constitution relative to the militia of the states respectively, render it necessary that provision should be made in the premises by the legislature of this state; Therefore,

Preamble to
the provisions
of this state.

I. Be it enacted by the People of the State of New-York, represented in Senate and Assembly, That the militia of this state shall be arranged into five divisions agreeably to the directions of the commander in chief and conformable to the act of congress aforesaid, and each division shall be formed into as many brigades and each brigade into as many regiments and each regiment into as many companies as the commander in chief shall in his discretion from time to time deem meet; and he shall order that at least one company of artillery and one troop of horse be formed from every brigade or from such of them as he shall require.

Militia to be
arranged into
five divisions,
&c.

II. And be it further enacted, That the commander in chief shall be entitled to appoint for himself three aids-de-camp who shall have the rank of lieutenant colonels.

Commander
in chief to
have three
aids-de-camp
& their rank.

III. And be it further enacted, That the cavalry of this state shall be organized into as many regiments as there are divisions, that each regiment consisting of not more than eight troops shall be divided into two squadrons, and each regiment consisting of more than eight troops shall be divided into three squadrons as the commander in chief shall direct, and each squadron shall be commanded by one major, and to each regiment there shall be one lieutenant colonel commandant and the same staff as regiments of infantry; that such regiments of cavalry shall be formed into two brigades each of which shall be commanded by a brigadier general; that the officers of cavalry shall rise and receive promotion in their respective troops, squadrons, regiments and brigades, and the whole shall be under the command of one major general; that the brigadier generals of infantry shall have the command of the troops attached to their brigade to parade for annual inspection, but all other parades shall be ordered by the officers of cavalry; and that the cavalry of this state shall parade for improvement twice in every year by troops to be ordered by the captains or commanding officers of troops, once in every year by troops or squadrons to be ordered by the lieutenant colonel com-

Cavalry how
organized and
officered.

When to pa-
rade.

mandant, and if the commanding officer of the brigades shall think proper once by regiments or brigades.

Every trooper
to provide a
horse.

Horses to be
enrolled and
exempted
from all seiz-
ures by execu-
tion, &c.

IV. *And be it further enacted*, That every trooper shall own and possess a horse able and fit for service, and if such trooper shall not procure and possess himself of such horse within the term of three months after his enlistment, such trooper shall be returned to the beat to which he before belonged; and all horses belonging to any troop shall be enrolled by the commanding officer of such troop by their distinguishing marks; and the horses so enrolled and doing duty in any troop shall be exempted from all attachments, seizures, distresses, executions or sales for debt, or for the payment of taxes; and it shall not be lawful for any officer to grant a certificate of enlistment to any trooper to excuse him from duty in any other corps, nor shall such trooper's horse be exempted from attachment until such trooper shall have the equipments required by the laws of the United States.

The artillery
how organis-
ed and offi-
cered.

When to pa-
rade.

V. *And be it further enacted*, That the artillery of this state shall be organized into as many regiments as there are divisions, that each regiment shall be divided into two battalions and each battalion commanded by one major, and to each regiment there shall be one lieutenant colonel commandant and the same staff as regiments of infantry; that such regiments of artillery shall be formed into one or more brigades as the commander in chief shall direct, each of which shall be commanded by a brigadier general; that the officers of artillery shall rise and receive promotion in their respective companies, battalions, regiments and brigades, and the whole shall be under the command of one major general; that the brigadier generals of the infantry shall have the command of the companies attached to their brigade to parade for annual inspection, but all other parades shall be ordered by the officers of artillery, and the artillery shall parade for improvement and inspection as often and in the same manner as the infantry are directed by law to meet for such purposes; *Provided always*, That nothing in this section contained shall apply to the regiment of artillery in the city of New-York.

Regiment of
artillery in
New-York
how officered
and composed

Rank and pro-
motion of the
lieutenant
colonel there-
of

VI. *And be it further enacted*, That the regiment of artillery in the city and county of New-York shall have three field officers, and each company shall consist of as many officers, non-commissioned officers and matrosses as is directed by the act of congress aforesaid; and whenever the lieutenant colonel of the said regiment of artillery becomes the senior lieutenant colonel within the district of the brigade of the city and county of New-York, it shall be lawful to appoint him to the rank of a brigadier general by brevet or otherwise, and confine him if necessary to the command of the regiment, and whea-

ever he becomes the senior brigadier general in the division in which he resides, it shall be lawful for the person administering the government by and with the advice and consent of the council of appointment, to appoint him major general of the said division ; and the said regiment shall in the direction of the commander in chief be subject to be annexed to and compose part of a brigade in such manner as he shall from time to time deem meet ; *And further*, The said regiment shall be ordered out for exercise at least twelve times and not exceeding eighteen times in every year by the commanding officer thereof ; and the commissary of military stores shall deliver to the commandant of the said regiment from time to time such ammunition as the person administering the government of this state shall judge necessary for the public good, to be expended in practising with field artillery, mortars and other useful experiments.

Said regiment to be attached to a brigade, &c.

When to be exercised.

VII. *And be it further enacted*, That all returns from the militia corps respectively, shall be made out and transmitted in such manner and at such time as the commander in chief shall direct ; and that every commissioned officer who shall from time to time be appointed shall report his acceptance of the office within ten days after having received notice thereof, to such officer or officers as the commander in chief shall from time to time direct.

Returns of the militia how made.

VIII. *And be it further enacted*, That the militia of this state shall rendezvous three times in every year for the purpose of training, disciplining and improving in martial exercise, twice by companies within their respective beats and once by regiments, except as is herein after excepted, and that each brigadier general shall appoint the regimental parades at such time and place as he may think proper, as nearly central as may be within each of the respective regiments ; that the time and place of the rendezvous for the companies shall be appointed by the colonel or commanding officer of the regiment and arranged on different days, that the field and staff officers may have an opportunity of attending the several companies exercised in detail, in order to introduce uniformity in the manœuvres and discipline of the regiments ; *Provided however*, That it shall be lawful for the militia of the counties of Otsego, Delaware, Herkimer, Oneida, Chenango, Tioga, Onondaga, Cayuga, Ontario, Steuben, Essex and Clinton to rendezvous by regiments or battalions, as the major general or commanding officer of the division may direct.

Militia to rendezvous three times by regiments and companies.

Provide as to certain counties.

IX. *And be it further enacted*, That every non-commissioned officer and private who shall neglect or refuse to obey the orders of his superior officer while under arms, shall forfeit two dollars and fifty cents for every such offence ; and if any such non-commissioned offi-

Penalty on non-commissioned officers and privates for disobedience of orders when under arms.

And for neglect of duty.

How recovered.

Provido in case of a military guard.

No fire arms to be discharged within two miles of the place of parade, under a penalty.

How long the militia to be considered under arms, during which time not to be arrested on civil process.

Not to parade so as to obstruct any public highway.

No person to sell any spiritous liquors on the ground of parade under a penalty.

cer or private enrolled to serve in either of the companies mentioned in this act, shall refuse or neglect to perform such military duty or exercise as he shall be required to perform, or shall depart from his colours or guard without the permission of his superior officer as aforesaid, he shall forfeit the sum of two dollars and fifty cents, and for the non-payment thereof the offender shall be committed to gaol, by warrant from the captain or commanding officer of the troop or company then present to which such offender doth belong, there to be confined until the fines as aforesaid together with the gaoler's fees are paid; and the respective sheriffs of the respective cities and counties of the state are hereby empowered and required to receive the body of any offender who shall be brought to them by virtue of any warrant under the hand and seal of any officer by virtue of this act, and him to keep in safe custody until such fines as are mentioned in such warrant together with the gaoler's fees as aforesaid shall be paid, or until the said offender shall be discharged by due course of law; and the sheriffs and gaolers respectively shall be allowed the same fees as are allowed in other cases; *Provided*, That in case of a military guard where a captain doth not command in person, a warrant granted by an inferior officer who shall have the command of such guard, shall be of the same authority against all offenders, as if such warrant had been issued by such captain.

X. *And be it further enacted*, That it shall not be lawful for any non-commissioned officer or private to discharge any fire arm within two miles of the place of parade on any day that they shall be ordered out for improvement or inspection without an order or permission of a commissioned officer, and if any such non-commissioned officer or private shall so discharge any fire arm without such order or permission he shall forfeit the sum of one dollar.

XI. *And be it further enacted*, That the militia of this state shall be considered to be under arms from the rising until the setting of the sun of the same day that they shall be ordered out by law for improvement or inspection, and that no officer, non-commissioned officer or private belonging to the same shall while under arms be subject to be arrested on any civil process.

XII. *And be it further enacted*, That no military corps shall be ordered to parade on any public road or highway so as to obstruct travellers from passing or repassing, but it shall be lawful for any such corps to occupy any such road or highway for a parade, allowing a passage for travellers as aforesaid; and that no person shall be permitted to sell or expose for sale on any parade, the bounds of which shall be determined by the commanding officer present at any such parade, any spiritous liquors whatsoever; and if any

person shall expose for sale any spiritous liquors contrary to this act and be thereof convicted before any court having cognizance thereof, he shall forfeit the sum of twenty-five dollars, the one moiety thereof to the person prosecuting for the same, and the other moiety to be paid and applied as fines for delinquencies in the regiment, on whose parade such liquor was exposed for sale as aforesaid.

How recovered & applied.

XIII. *And be it further enacted,* That the commanding officer of every regiment shall call a meeting of the commissioned officers of their respective regiments at such times and places as he shall appoint for improvement, which shall be at least once and not exceeding three times in every year; and that every commissioned officer being duly notified and neglecting to attend such meeting, shall forfeit and pay ten dollars for every such neglect, unless such delinquent officer shall assign such reasons for non-attendance as shall be satisfactory to said commandant, to be recovered with costs by and in the name of the adjutant of such regiment, in any court having cognizance of the same.

Commanding officer of every regiment to call meetings of commissioned officers for improvement. Penalty for non-attendance and how recovered.

XIV. *And be it further enacted,* That the divisions, brigades and regiments of militia in this state, shall be numbered in such order as the commander in chief shall direct.

Division, brigades and regiments to be numbered.

XV. *And be it further enacted,* That the age and ability of any person to bear arms shall be determined by the captain or commanding officer of the company, with the right of appeal to the commandant of the regiment; and that every occupant or householder in the city and county of New-York, shall when thereunto required by the enrolling officer or officers of a beat, deliver verbally or in writing the name and age of every male between eighteen and forty-five years of age, that resides or boards in their house, under the penalty of ten dollars for every such neglect or refusal.

The age and ability of every person to bear arms by whom to be determined. Every householder in the city of New-York to furnish the name and age of every male, &c. in his family.

XVI. *And be it further enacted,* That where any person shall have been enrolled in the militia of this state and shall remove to and within the beat of some other company than that in which he was so enrolled, he shall be liable to be warned for militia duty from the time he shall so come to reside within the same; and that no non-commissioned officer or private belonging to any corps of cavalry, artillery, grenadiers or light infantry, shall be allowed to leave such corps and enlist in any other, without the written consent of the officer commanding such corps, except in cases of removal from and out of the beat of such corps.

Any person enrolled and removing into the beat of another company liable to serve therein.

No non-commissioned officer or private allowed to enlist in another corps without the written consent of the commanding officer.

XVII. *And be it further enacted,* That the military uniform of this state shall be as follows: General officers, dark blue coats with buff facings, linings, collars and cuffs and with buff under clothes; regimental and staff officers, dark blue coats with white linings, scarlet facings, collars

Military uniform.

and cuffs and with white under clothes ; non-commissioned officers and privates of the grenadier and light infantry companies, dark blue coats with white linings, scarlet facings, collars and cuffs and white under clothes ; and the buttons of the uniform of the militia in the respective brigades, shall be either of white or yellow metal in the discretion of the brigadier general thereof.

Cockade.

XVIII. *And be it further enacted*, That the cockade of the army of the United States shall be the cockade of the militia of this state.

The commanding officer of any division in certain counties may direct the light infantry to uniform in rifle frocks and overalls.

Commander in chief to direct the uniform of the cavalry and artillery.

Companies of artillery, horse, grenadiers or infantry not in uniform within a certain time to be dissolved. In cases of emergency the commander in chief may order out the militia.

And on application of the executive of another state ;

Provided they are not on duty out of the state more than 40 days and receive pay, &c.

How and by whom the militia may be called out in cases of invasion or insurrection.

XIX. *And be it further enacted*, That it shall be lawful for the major general or commanding officer of any division respectively, in the counties of Montgomery, Otsego, Herkimer, Oneida, Chenango, Tioga, Onondaga, Cayuga, Ontario, Steuben, Essex and Clinton, if he shall deem it expedient to direct the light infantry and riflemen of such division to uniform themselves in rifle frocks and overalls.

XX. *And be it further enacted*, That the commander in chief shall direct the colour and fashion of the uniform of the cavalry and artillery in this state not already provided with uniform, and that no troop or regiment of horse or company or regiment of artillery shall hereafter parade otherwise uniformed than as shall be so directed by the commander in chief ; and that if any company of artillery, troop of horse, company of grenadiers or light infantry, shall not have thirty men in uniform according to law within one year after such company or troop has been organized, such company or troop shall be dissolved.

XXI. *And be it further enacted*, That the commander in chief of this state, may in case of invasion or other emergency, when he shall judge it necessary, order out any proportion of the militia of this state to march to any part thereof, and continue as long as he may think necessary, and likewise may in consequence of an application of the executive of any of the United States on an invasion or insurrection or an apprehension of an invasion of such state, at his discretion order any number of the militia not exceeding one third part thereof, to such state ; *Provided*, That they be not compelled to continue on duty out of this state, more than forty days at any one time, that while in actual service in consequence of being so called out, they shall receive the same pay and rations and be subject to the same rules and regulations as the troops of the United States of America.

XXII. *And be it further enacted*, That it shall and may be lawful to and for any major general of a division or commanding officer of a brigade, or commanding officer of a regiment, when and as often as any invasion may happen, to order out the militia or any part thereof under their respective commands, for the defence of this state, giving notice of such invasion and every circumstance at-

tending the same as early as possible to their immediate commanding officer, by whom such information shall be transmitted with the utmost expedition to the commander in chief of this state; and that in cases of insurrection the commanding officer of the regiment, within the limits of which any such insurrection may happen, shall immediately assemble his regiment under arms, and having transmitted information thereof to the commanding officer of the brigade and to the commander in chief of this state, shall proceed to take such measures to suppress such insurrection as to any three of the judges or justices of the county in which such insurrection shall happen, shall appear most proper and effectual; and if any person be wounded or disabled while in actual service of this state in opposing any invasion or insurrection or in suppressing the same, he shall be taken care of and provided for at the expence of this state; *Provided always*, That if such judge or justices shall deem a greater number of militia requisite to quell such insurrection, they shall and are hereby required to apply for the same to the commanding officer of the division or any brigade thereof, who are hereby severally required to obey such requisition.

Persons wounded or disabled how provided for.

Provifo.

XXIII. *And be it further enacted*, That courts martial for the trial of general officers shall be ordered by the commander in chief of this state, and shall consist of general and field officers taken from a roster to be kept by the adjutant general for that purpose; that courts martial for the trial of field officers shall be ordered by the commanding officer of the division, and shall consist of commanding officers of brigades, field officers, and if requisite, of captains; that courts martial for the trial of officers below the rank of field officers, shall be ordered by the commanding officer of the brigade, and shall consist of field officers and others of inferior rank; that the commandants of regiments shall institute regimental courts martial within their respective regiments as often as it shall be found necessary.

Courts martial for the trial of general officers;

Of field officers;

Of other officers.

Regimental courts martial.

XXIV. *And be it further enacted*, That a court martial other than regimental courts martial, shall consist of thirteen commissioned officers who shall appoint their own judge advocate, which judge advocate shall tender to each member, and each member is hereby required to take the following oath:

Of what number a court martial other than regimental courts martial to consist.

"You do swear, that you will well and truly try and determine according to evidence, the matter now depending between the people of the state of New-York and the person or persons to be tried; and you do further swear, that you will not divulge the sentence of the court until the same shall be approved or disapproved pursuant to the act, entitled An act to organize the militia of this state, neither will you upon any account at any time whatsoever disclose or

Oath to be taken by each member.

discover the vote or opinion of any particular member of the court martial, unless required to give evidence thereof by a court of justice in a due course of law. So help you God."

And the president is hereby authorized to tender to the judge advocate, who is hereby enjoined to take the following oath :

Oath of the judge advocate.

" You do swear, that you will not upon any account or at any time whatsoever disclose or discover the vote or opinion of any particular member of the court martial, unless required to give evidence thereof as a witness by a court of justice, in a due course of law, and that you will not divulge the sentence of this court until the same shall be approved or disapproved, pursuant to the act, entitled An act to organize the militia of this state. So help you God."

The president to issue precepts to summon witnesses.

And it shall and may be lawful for the president of any such court after he shall have received notice of his appointment, and he is hereby required, on application to issue his precept directed to any witness to be summoned, commanding his attendance at the time and place appointed for such court to sit, to give evidence in behalf of the people of this state, or for the person or persons to be tried, as the case may be ; and any witness being summoned and making default shall incur the like fines and forfeitures as are inflicted on witnesses for their default in not attending justices' courts, by the *Act for the more speedy recovery of debts to the value of twenty-five dollars* ; and the president of any such court martial shall be and is hereby empowered to administer the usual oath to such witnesses as shall come to give evidence to such court,

Penalty on witnesses for non attendance.

The president to administer to them the usual oath.

If an officer be arrested the charge to be set forth in writing, &c.

during the time he shall be president thereof ; and that if any officer shall be arrested by virtue of this act, the charge shall particularly be set forth in writing and signed by the arresting officer, a copy whereof shall be delivered to such officer so arrested or left at his usual place of abode within three days after such arrest, and the person so arrested shall not be held to answer to any matter whatever not set forth in such charge ; that every commissioned officer who shall be convicted by a general court martial, of having refused or neglected to perform any of the duties of his office, shall be punished according to the nature and degree of his offence, at the discretion of the said court, either by fine or removal from office ; *Provided*, No fine shall exceed twenty-five dollars for the first offence, or one hundred and twenty-five dollars for any subsequent offence.

If convicted how to be punished.

Provido.

Of what number regimental courts martial to consist.

XXV. *And be it further enacted*, That a regimental court martial shall consist of not less than three nor more than five commissioned officers ; the president of such court martial shall before the said court proceeds on the duties assigned to them, administer to each member, and each member is hereby directed to take the following oath :

"You do swear, that you will well and truly try and determine according to evidence the matter now depending between the people of the state of New-York and the person and persons to be tried; and you do further swear, that you will not upon any account at any time whatsoever disclose or discover the vote or opinion of any particular member of the said court, unless required to give evidence thereof by a court of justice in a due course of law."

Oath to be taken by each member.

Which oath shall be taken by the president of the said court martial before he enters upon the duties of his office, for which purpose he shall appear before one of the justices of the peace of the said county where he resides, which justice is hereby required to administer the aforesaid oath to such president, without receiving any fee or reward for the same; and the said regimental courts martial shall from time to time convene at such place and at such times as the commanding officer of the regiment shall direct, to the president of each of which courts martial all returns of delinquents from the said regiments shall be made, which president shall direct the delinquents on a day and at a place certain to be summoned to appear before the said court, and to shew cause why the fines incurred by them should not be levied; and it shall be in the discretion of such court to cause the fines to be levied either in the whole or mitigated or remitted in their discretion; and the president of each of the said regimental courts martial, shall have the like power as the president of other courts martial as aforesaid, relative to sending for witnesses, administering to them the usual oath, and the same penalties shall be incurred by witnesses for their non attendance.

And by the president.

When and where to convene.

Returns of delinquents to be made to the president who shall direct them to appear, &c.

Power of such courts.

XXVI. *And be it further enacted, That the proceedings and sentence of every court martial by which an officer shall be tried, shall be in writing, signed by the president thereof, and shall by him be delivered to the officer ordering such court martial; that all decisions of every such court martial for the trial of officers shall be approved or disapproved of by the officer ordering the same, with a right of appeal only by any person who may conceive himself aggrieved to the commander in chief; Provided always, That it shall be the duty of the officer directed by law to order any court martial for the trial of officers, to order the same within thirty days after receiving a copy of the arrest and charges on which any arrest is made, and within fifteen days after the decision of any court martial, shall approve or disapprove of the same in orders; and provided further, That no sentence of courts martial on a general officer shall go further than removal from office.*

Sentence of a court martial on the trial of officers to be in writing.

And approved or disapproved by the officer ordering such court.

Within what time court martial to be ordered and its decision approved or disapproved.

No sentence against a general officer to extend beyond a removal from office.

XXVII. *And be it further enacted, That every non-commissioned officer who shall neglect or refuse to warn*

Non-commissioned officers

neglecting to perform certain duties subject to a penalty.

How to be levied.

What warning to appear and rendezvous shall be deemed sufficient.

Every non-commissioned officer to make a return upon oath of the persons warned by virtue of any warrant or order.

Such return to be sufficient evidence.

Fines for not appearing when so warned and for not being properly equipped.

Certain fines not to be levied until the delinquent be warned to show cause &c.

the men to appear at any rendezvous mentioned in this act, when thereunto required by his captain or commanding officer, without sufficient excuse, or shall neglect or refuse so to summon any delinquent in the company to which he belongs, to appear before any court martial when thereunto required by a summons from the president thereof, or shall neglect to return any such summons in his own proper person before such court martial, without having sufficient excuse, he shall forfeit the sum of five dollars for every such neglect or refusal, to be imposed, levied and collected as fines for other delinquencies.

XXVIII. *And be it further enacted,* That as often as it shall happen that any non-commissioned officer or private shall be absent, when any non-commissioned officer shall call to warn him to appear to any rendezvous, a notice in writing, signed by such non-commissioned officer and left with some person of suitable age and discretion at the usual place of his abode shall be deemed a sufficient warning.

XXIX. *And be it further enacted,* That every non-commissioned officer to whom any warrant or order from his superior officer shall be directed and delivered, for warning any non-commissioned officer or private, he shall when he has executed the same indorse on the back thereof a return, setting forth the names of such as he hath warned in pursuance of it, and shall make oath to the truth of such return before the captain or commanding officer of the company to which he belongs, who is hereby authorized and directed to administer such oath, and certify the same on such warrant, and deliver it together with his return of delinquents to the president of the court martial; and such return so sworn to and certified, shall be sufficient evidence to prove such warning.

XXX. *And be it further enacted,* That every non-commissioned officer or private who shall neglect to appear when warned in pursuance of this act, without sufficient excuse, shall for every day he neglects to appear at the regimental or battalion rendezvous, forfeit the sum of two dollars, and for every day he neglects to appear at the company parade forfeit the sum of one dollar; and if he shall not be armed or equipped according to the directions of this act, when so appearing without sufficient excuse, he shall for every deficiency forfeit the sum of twelve and an half cents, and appearing without a musket the sum of fifty cents; *Provided always,* That none of the fines aforesaid, or any other arising from offences in a regiment or company thereof, any company of artillery or troop of horse, other than disobedience of orders under arms, shall be levied on any delinquent until he shall have been summoned to appear before a regimental court

martial, that he may show cause why such fine should not be levied.

XXXI. *And be it further enacted*, That every troop of horse, and every company of artillery attached to any one of the divisions of this state, shall be considered as attached to the regiment within the bounds of which the commandant of such troop of horse or company of artillery shall reside, for the purpose of imposing, levying and collecting fines for delinquencies ; and it shall be the duty of the captain or commanding officer of every such troop of horse or company of artillery to make a return of all delinquents in their respective companies, in the same manner as the captains or commanding officers of infantry are directed by law, to the president of the court martial in such regiment ordered to investigate the excuses and impose the fines on delinquents in the same ; and the authority and decision of every such court martial shall extend to such troop of horse and company of artillery as fully as it does to the infantry of such regiment.

Troops of horse and companies of artillery to be considered as attached to certain regiments for the purpose of fines, &c.

XXXII. *And be it further enacted*, That all fines which shall be imposed by any regimental court martial on delinquents, shall be collected in the the following manner : The president of every such court martial shall make a list of all the persons fined, designating the company to which they belong, and the sums imposed as fines on each person, and draw his warrant under his hand and seal, directed to any marshal or constable of any city or county, as the case may be, thereby commanding such marshal or constable to levy such fine or fines together with his costs of the goods and chattels of such delinquent ; and if any such delinquent shall be under age and live with his father or mother, master or mistress, thereby commanding him to levy the same with costs aforesaid of the goods and chattels of such father or mother, master or mistress, as the case may be ; and every such marshal or constable, to whom any such list and warrant as aforesaid shall be directed and delivered, shall execute the same by levying and collecting the said fines as aforesaid, and shall make return thereof within forty days from the receipt of such warrant to the president who issued the same ; and such marshal or constable shall be entitled to the same fees for collecting the said fines, and subject to the same penalties for any neglect, as are allowed and provided for on executions issued in pursuance of the act, entitled *An act for the more speedy recovery of debts to the value of twenty-five dollars.*

Fines imposed by regimental courts martial how to be collected.

XXXIII. *And be it further enacted*, That all fines imposed upon any commissioned officer by any court martial, other than regimental courts martial, shall be levied and collected by warrant under the hand and seal of the officer having instituted the court martial, or in his absence by

Fines imposed on commissioned officers by courts martial other than regimental courts

martial, how
to be collect-
ed.

the commanding officer of the division, if such court martial was formed from the division, or by the commanding officer of the brigade, if such court martial was formed from the brigade, directed to any one adjutant of the brigade, or person acting as such, to which the officer on whom such fine is imposed may belong, in like manner as fines are to be recovered as aforesaid of non-commissioned officers and privates.

Compensation
to brigade in-
spectors, to
the president
and members
of regimental
courts mar-
tial & to the
non-commis-
sioned officers
attending the
same.

XXXIV. *And be it further enacted*, That each brigade inspector shall be entitled to receive fifty dollars per annum out of the fines collected within the brigade, and that the president and each member of every regimental court martial, while on that duty, shall retain out of the fines collected as aforesaid on delinquents in such regiment the sum of one dollar and twenty-five cents per day, if a sufficiency shall be collected, and the president of such court is hereby authorized to make such allowance to the non-commissioned officers attending the said court as a compensation for their services as shall be reasonable.

Fines not oth-
erwise appro-
priated how
to be applied.

XXXV. *And be it further enacted*, That all fines collected under this act and not herein otherwise appropriated, shall be paid to the commandant of the regiment or battalion to be by him appropriated in such manner, for the use of said regiment or battalion, as he shall think proper; *Provided always*, That such commandant shall pay to the brigade major of the brigade to which such regiment or battalion belongs, his proportion of the sum of fifty dollars allowed him as aforesaid, out of the fines so collected, which apportionment shall be determined according to the number of regiments, battalions, troops and companies in such brigade; *And provided also*, That the said commandant shall pay to the captain or commanding officer of any troop of horse or company of artillery, such proportion of money as shall remain in his hands, of fines collected from such troop or companies, to be by him appropriated in such manner as he shall think proper for the use of such troop or company; and it shall be the duty of all commandants of regiments and battalions, and captains or commanding officers of troops of horse or companies of artillery, to produce an account of all receipts and expenditures under this act, to the brigadier or commanding officer of the brigade annually on the first Tuesday in May in every year.

Proportion of
a certain sum
to be paid to
the brigade
major.

A proportion
of the fines to
be paid to the
commanders
of troops of
horse & com-
panies of ar-
tillery for
their use.

Duty of cer-
tain officers
annually to
account to the
commanding
officer of the
brigade for
fines received.

Persons ex-
empted from
militia duty.

XXXVI. *And be it further enacted* That in addition to persons exempted from militia duty by the law of the United States herein before recited, there shall be and hereby are exempted by this act from such duty as aforesaid, the following persons, viz. The lieutenant-governor of this state, the members of both houses of the legislature of this state and their respective officers, the chancellor, the chief justice and other justices of the supreme

court, judge of the court of probates and all other judicial officers of this state, secretary, treasurer, attorney general and comptroller for this state, surveyor general, register and clerks of courts, sheriffs, coroners, constables and gaolers, two ferrymen employed to each boat, the surrogates in the several counties, all ministers and preachers of the gospel, physicians and surgeons except in their several professions and callings, the professors, teachers and students in all colleges and academies within this state, all schoolmasters engaged for at least three months, all post riders, the actual attendant of every grist mill, and all firemen belonging to companies now established or which hereafter may be established by law within this state, and also all persons actually employed as overseers, manufacturers and labourers at any furnace, forge or bloomery for making iron, all such persons so employed in plating, rolling and slitting mills and manufacturing nails by water, all such persons so employed at any furnace or making iron castings, all such persons so employed at any glass house for making glass, during the time they are so actually employed, notwithstanding their being above eighteen and under forty-five years of age; *And further*, That all persons who have heretofore been commissioned officers in the line of the army of the United States, and all officers who have served in the militia or levies of this state, or in the militia or levies of any of the United States, or in the militia or levies of the late colony of New-York, shall be and hereby are exempted from serving in the militia of this state; *Provided nevertheless*, That if any such officer shall be commissioned in the militia to a rank equal to that which he held in the said army, militia or levies, and shall refuse to accept such commission, such officer so refusing without giving satisfactory reason to the council of appointment for such refusal shall be liable to serve in the militia; *And provided also*, That this exception shall not extend to any such persons being officers who have gone over to and joined the enemy in the late war; *Provided also*, That no commissioned officer shall resign his commission, without first making application to the major general or commanding officer of the division to which he belongs, and stating his reasons in writing for the same, which resignation and reasons shall be transmitted by the said commanding officer to the commander in chief of the militia of this state, together with his opinion thereon; and in case any officer sends his resignation to the commander in chief, and the same be accepted by the council of appointment, without having pursued the mode herein prescribed, such officer shall be liable to do duty in the militia as a private.

Proviso as to certain officers.

Further proviso.

Further proviso.

XXXVII. *And be it further enacted*, That it shall be the duty of the several assessors within the city and county

Assessors in the city of

New-York to deduct a certain sum from the taxable property of any non-commissioned officer or private in the artillery.

of New-York, whenever they have assessed the property of any non-commissioned officer or private belonging to the regiment of artillery in the said city and county, or property for which he is bound to pay taxes, for the purpose of levying a tax to defray the contingent expences of the said city and county, upon his producing *such certificate*† to deduct from such assessment the sum of five hundred dollars, and the residue only shall be the sum for which he shall be assessed.

Service of 4 years by a non-commissioned officer or matrofs in the regiment of artillery in the city of New-York to exempt from militia duty for life, except, &c.

XXXVIII. *And be it further enacted,* That any non-commissioned officer or matrofs of the said regiment of artillery in the city and county of New-York, who has uniformed himself and served four years in the said regiment after the twenty-seventh day of August, one thousand seven hundred and ninety-eight, shall be entitled to a certificate signed by the captain and countersigned by the commandant of the regiment, purporting that he has served in uniform faithfully as above for the term of four years, which certificate shall exempt him from military duty in this state for life, except in cases of invasion or insurrection.

Quakers exempted from military service on paying an annual sum.

XXXIX. *And be it further enacted,* That all persons being of the people called Quakers, who would otherwise be subject to military duty by virtue of this act, and who shall refuse personal military service, shall be exempted therefrom on paying annually the sum of three dollars each for such exemption; and it is hereby made the duty of every captain of infantry within three months after he shall have received his commission, and yearly thereafter on the last Tuesday in May, to make a list of the names of all persons within his beat, who being of the people called Quakers, shall neglect or refuse personally to perform military service, and deliver such list signed by him to one of the assessors of the town or ward where such persons so neglecting or refusing to perform military service shall respectively reside; and the said assessors shall deliver the same list to the board of supervisors of the county wherein they reside, at the time that they deliver the assessment roll of the town or ward whereof they are assessors; and the said supervisors shall at their first meeting after the delivery of such lists cause tax lists to be made out according to such lists so delivered, with warrants thereon under their hands and seals, directed to the collector of the ward or town in which such persons named in such lists respectively reside, for levying within sixty days thereafter the sum of three dollars of the goods and chattels of each of the persons named in the same lists, and the said collectors are hereby respectively authorised and required, to demand and receive of

Every captain of infantry to make a list of such exemptions within his beat.

And deliver the same to the assessors of the town,

Who shall return the same to the supervisors of the county.

Supervisors to make tax lists according thereto.

How the same shall be levied and collected and to whom paid.

† Note. This certificate must allude to the one mentioned in the next section, and this section and the next were probably transposed by mistake. Editors.

each of the persons named in such tax list, the said sum of three dollars, and in default of payment such collector shall levy the said sum of three dollars by distress and sale of the goods and chattels of the person so neglecting or refusing to pay the same; and in case any person named in such tax list shall be under age and live with his father or mother or shall be then an apprentice or servant, the master or mistress, father or mother, as the case may be, shall be liable to pay the said sum of three dollars for such person so under age, and in default of payment the collector shall levy the same by distress and sale of the goods and chattels of such father or mother, master or mistress; and the said respective collectors shall respectively pay within twenty days after the said monies shall be so collected the said monies to the person appointed by the brigadier general for receiving the same within the limits of the brigade, first deducting their fees for collecting, which shall be the same as they are entitled to for collecting the monies raised for defraying the necessary and contingent charges of the said city or county; and the person so receiving the said exemption monies, shall on or before the first Monday in March in every year pay the same to the brigadier general, who shall cause the same to be equally distributed among all the captains or officers commanding companies of uniform troops within the limits of his brigade, to be by them respectively applied in furnishing necessary equipments, music and cloathing for their respective companies; and if the said collectors shall not collect and pay the same monies as aforesaid within the times to be specified for that purpose in the warrants aforesaid, they shall respectively be liable to a suit in the name of the person so to be appointed to receive the monies by the brigadier general, before any court having cognizance thereof, for the recovery of all the monies so unpaid with costs, unless they can show that there were no goods or chattels on which to levy the same; and it shall be the duty of the brigadier general to account annually with the comptroller of this state for all monies by him received under this act.

To be distributed among the captains &c. of uniform troops for their use.

Collectors on default to be liable for the whole amount and to whom.

Unless there be no goods or chattels on which to levy Brigadier general annually to account for monies received under this act.

Commissionaries for military stores. &c. to be appointed.

Governor to direct their distribution or deposit.

Compensation to such commissary.

XL. And be it further enacted, That the person administering the government of this state shall by and with the advice and consent of the council of appointment, appoint as often as it shall be requisite suitable persons to take charge of the arms, ammunition, cannon and military stores belonging at any time to the people of this state; and shall cause the same to be distributed or deposited in such place or places as he shall from time to time direct; and that the treasurer of this state shall pay on the warrant of the comptroller, to the commissary of military stores for his service in the said office, at the

And to the deputy commissary for the charge of the arsenal near the city of Albany.

rate of two hundred dollars per annum, and to the deputy commissary of military stores for his services in taking charge of the arsenal near the city of Albany and the military stores that may be deposited therein, for his services yearly the sum of one hundred dollars.

C H A P. CLXVII.

An ACT concerning the Inspection of Pot and Pearl Ashes.

Passed 7th April, 1801.

Inspectors of
pot and pearl
ashes to be
appointed.

I. **B**E it enacted by the People of the State of New-York, represented in Senate and Assembly, That the person administering the government of this state by and with the advice and consent of the council of appointment, shall from time to time appoint one inspector of pot and pearl ashes in each city and county of this state where it shall be deemed necessary; *Provided however*, That the present inspectors of pot and pearl ashes shall continue in office until others are appointed, and each inspector hereafter to be appointed shall before he enters upon the execution of his office take and subscribe the following oath before any person authorised to administer the same, or if in the city of New-York or Albany, before the mayor or recorder thereof, viz.

Inspector's
oath.

"I do solemnly swear, that I will faithfully, truly and impartially, to the best of my judgment, skill and understanding, execute, do and perform the office and duty of an inspector, (or, deputy inspector, as the case may be) and examiner of pot and pearl ashes, according to law; and that I will not directly or indirectly, by myself or any other person or persons for me, buy or sell any pot or pearl ashes, during the time I continue inspector, (or, deputy inspector, as the case may be) of the same, on my own account or upon the account of any other person or persons whomsoever. So help me God."

No pot or
pearl ashes to
be shipped be-
fore inspec-
tion.

II. *And be it further enacted*, That no person whatsoever shall ship any pot or pearl ashes for exportation before he shall first submit the same to the view and examination of an inspector appointed for that purpose, who shall start the same out of the casks and carefully examine, try and inspect the same, and sort the same in three different sorts if necessary; that the said inspector shall put each sort by itself into tight casks, well hooped and coopered, which he shall distinguish by the words "First Sort," "Second Sort" or "Third Sort," with the words "Pot" or "Pearl Ashes" branded in plain legible letters, together with the letters of his name and the place where such pot or pearl ashes are so inspected, at full length on each of the casks, and also shall weigh and mark with a

Inspector's
duty.

marking iron on each cask the gross weight thereof; for which services, and also for the additional service of re-packing the said pot or pearl ashes, and putting the casks in such condition as they were in when brought to him for inspection, and for weighing the same and delivering to the proprietors an invoice or weigh note under his hand of the weight of each cask, the said inspector shall have and receive nine cents for every hundred weight so inspected, one half to be paid by the purchaser, and the other half by the vendor; *Provided*, That if any such cask or casks shall in the judgment of the inspector be unfit for shipping, such further cooperage or such new casks as may be necessary shall be made or done at the expence of the vendor; *And provided further*, That no inspector shall brand any cask containing pot or pearl ashes, unless the same be twenty-nine inches in length, nineteen inches in diameter at each head, be full bound, be made of white oak staves and heading, or such other timber as the said inspector may think proper, and be sound and tight; and every inspector at the time of starting the said pot or pearl ashes for inspection shall weigh the casks containing the same and mark the tare thereon with a marking iron under the gross weight on each cask.

Inspector's fees.

Size & quality of the casks.

Tare to be marked thereon.

III. *And be it further enacted*, That when any inspector shall on examination of any pot or pearl ashes submitted to him for inspection, discover any fraud either by the mixture of stone, lime, salt or any other improper substance whatever, then and in such case it shall be the duty of the said inspector to brand the cask containing such adulterated ashes with the word "*Condemned*," and the inspector shall be entitled to receive from the person owning or presenting such ashes for inspection the same compensation as though they had been good; and if any person shall offer or expose for sale any ashes so condemned as aforesaid for any other than condemned ashes, he shall forfeit the sum of twenty-five dollars for every barrel so exposed for sale, to be recovered by any person who will sue for the same before any court having cognizance thereof, the one half to the use of the poor of the said city or town where such recovery shall be had, and the other half to the use of the person who shall prosecute for the same to effect.

Duty of the inspectors in cases of fraud.

Penalty for offering condemned ashes for sale.

How to be recovered and applied.

IV. *And be it further enacted*, That every such inspector shall have full power and authority, by virtue of this act and without further or other warrant to enter on board of any ship or vessel whatsoever lying at or being in the harbour where such inspector is authorised to inspect pot or pearl ashes, to search for any pot or pearl ashes shipped or shipping on board any such vessel for exportation out of this state, and if such inspector shall on search discover any cask of pot or pearl ashes not branded as be-

Inspector may search any vessel for pot or pearl ashes.

And if he discover any cask not branded as

shall be forfeited. fore directed, the person so shipping or having shipped the same shall forfeit every such cask of pot or pearl ashes so shipped or shipping and not branded in the manner herein before directed; and the master or commander of any such vessel, who shall receive any such cask or casks of pot or pearl ashes not branded as aforesaid, shall forfeit the sum of twelve dollars and fifty cents; and if any master of any ship or vessel or any of his servants or seamen shall obstruct or hinder the said inspector in making such search as aforesaid, every person so offending shall for such offence forfeit the sum of twenty-five dollars.

Where pot & pearl ashes shall be inspected. V. *And be it further enacted,* That all pot or pearl ashes shipped for exportation from any part of this state, shall be inspected at the place where the said pot or pearl ashes may be so shipped for exportation out of this state, having the name of the place where it shall be shipped and the letters of the inspector's name who has inspected and examined the same as before directed.

Penalty on Inspector for derelict inspection. VI. *And be it further enacted,* That if any inspector aforesaid, not then employed in the duties of his said office, shall on application to him to examine any pot or pearl ashes refuse or delay to proceed to such examination and inspection for the space of three hours thereafter, every such inspector shall for each offence forfeit two dollars and fifty cents to the use of the person so delayed.

Penalty for counterfeiting brand marks. VII. *And be it further enacted,* That if any person shall counterfeit any of the brand marks aforesaid of the said inspectors or impress or brand the same on any cask of pot or pearl ashes, knowing such brand mark or impression to be counterfeit, or if any person shall empty any cask of pot or pearl ashes branded as aforesaid, in order to put in other pot or pearl ashes for sale or exportation, without first cutting out the said brand marks, every such person being thereof legally convicted shall for each offence forfeit and pay the sum of one hundred and twenty-five dollars.

Inspectors may appoint deputies: VIII. *And be it further enacted,* That it shall be lawful for any inspector as aforesaid to appoint under his hand and seal one or more deputies to assist him in performing the duties of his office and the same to remove whenever he may think proper, and all such duties performed by deputies shall be in the name of the inspector appointing them, who shall be responsible for the faithful conduct of his deputies, and all such deputies shall after being appointed as aforesaid and before they enter upon the duties of their office respectively take and subscribe an oath in the manner and form as is herein before described.

Answerable for their conduct. IX. *And be it further enacted,* That all fines and forfeitures aforesaid shall be recoverable in the same manner as other debts of the same value are recoverable, by ac-

Fines and forfeitures how to be recovered & applied.

tion of debt or by information, the one moiety thereof when recovered, except where the same are herein otherwise applied, to the use of the person suing for the same, and the other moiety to the use of the poor of the city or town where the offence was committed.

C H A P. CLXIX.

An ACT to prevent and avoid Alienations by Tenants for Life, and recoveries by Collusion.

Passed 7th April, 1801.

I. **B**E it enacted by the People of the State of New-York, represented in Senate and Assembly, That if any woman who hath or hereafter shall have any estate in dower or for term of life, jointly with her husband, or only to herself or to her use in any lands, tenements or hereditaments of the inheritance or purchase of her husband, or given to the said husband and his wife for term of life by any of the ancestors of the said husband, or by any other person seized to the use of the said husband or of his ancestors, and being sole, or with any subsequent husband or with any other person seized to their or either of their use of such estate, shall discontinue, alien, release or confirm, with or without warranty, or shall suffer any recovery by covin against her or them, or any other seized to their use or to the use of either of them, all such recoveries, discontinuances, alienations, releases, confirmations and warranties shall be void; and if such woman be at the time married, then it shall be lawful for the person to whom the said lands, tenements or hereditaments ought to belong after the decease of the said woman, immediately to enter into the same, and them to possess during the life of the said husband, according to such title and interest as he would have had in the same if the same woman had been dead, and no discontinuance, warranty nor recovery had; but the said woman in such case, after the decease of the said husband, may re-enter into the same lands, tenements and hereditaments, and enjoy the same according to her first estate therein; but if the said woman, at the time of such discontinuance, alienation, recovery or warranty be sole, then she shall be barred of her title and interest in the same, and the person to whom the title, interest and possession of the same should belong after the decease of the said woman, shall immediately enter into the same lands, tenements and other hereditaments and possess and enjoy the same according to his title; *Provided always*, That this act shall not extend to any such recovery or discontinuance had with the heirs next inheritable to the said woman, or where he or they that next after the death of the same

Discontinuances and alienations by a woman of her dower or estate for life in lands of her husband with or without warranty, and recoveries of the same by covin to be void.

And the person entitled to the inheritance may enter.

But the woman if she survives her husband may re-enter.

And if she was sole at the time of such discontinuance, alienation or recovery then she shall be barred of her title.

This act not to extend to any recovery, &c. had with the assent of

the heir or reversioner.

Her conveyance, if sole, for the term of her life good.

No act of the husband only, touching the lands of the wife, to prejudice her or her heirs.

A woman may recover her lands lost by the default of her husband

The heir, reversioner or remainder man may recover lands lost by the default of tenants in dower, by the curtesy or for life.

Upon the default of the husband, wife to be received to defend her right.

Reversioner to be received to defend his right.

Where tenant in dower, by the curtesy or for life lost by default, the reversioner or remainder man may have writ of error.

woman should have estate of inheritance in the same lands, tenements or hereditaments, be assenting to the said recovery, where the same assent be by deed or of record; *And provided also*, That it shall be lawful for every such woman, being sole or married, after the death of her first husband, to give, sell or make discontinuance of any such lands, tenements or hereditaments for term of her life only, after the course of the common law.

II. *And be it further enacted*, That no fine, feoffment or other act suffered or done by the husband only of any lands, tenements or hereditaments being the inheritance or freehold of his wife, during the coverture between them, shall prejudice the said wife or her heirs, or such as shall have right or interest to the same upon the death of such wife; but they may respectively enter into and enjoy the same, according to their rights and titles therein, as if no such act had been done or suffered.

III. *And be it further enacted*, That if the husband lose by default the land which was the right of the wife, the wife after the death of her husband may have a writ of right or an action of ejectment to recover the same, and the judgment by default shall be no bar to such action; and if any tenant in dower, tenant by the curtesy or other tenant for term of life or lives, who shall be impleaded, make default or give up the lands demanded, and judgment be given upon such default or surrender, the heirs or person to whom the reversion or remainder doth appertain after the death of such tenants, may have their action of ejectment to recover the same lands.

IV. *And be it further enacted*, That when any husband and wife shall be impleaded, if the husband absent himself and will not defend his wife's right, or against his wife's consent will render the land, if the wife do come before judgment to defend her right, she shall be admitted without her husband.

V. *And be it further enacted*, That if any tenant in dower, tenant by the curtesy or other tenant for term of life or lives, be impleaded and the person to whom the reversion or remainder shall appertain, shall come into court and pray to be received to defend his right, at the day that the tenant pleadeth to the action or before, and before judgment, such person shall be received to defend his right and to plead to the action upon such terms as the court shall in its discretion deem just and equitable.

VI. *And be it further enacted*, That if any tenant for term of life, tenant in dower or tenant by the curtesy, be impleaded and have judgment against him by default or otherwise, the person to whom the reversion or remainder of the tenements so lost shall appertain at the time of such judgment given, and his heirs, shall have a writ of error if error be found in the record of such judgment,

as well in the life time of such tenant as after his death ; and if such judgment be reversed the tenant who lost by the first judgment, if he or she shall be in life, shall be restored to the possession of the tenements so lost, with the issues in the mean time, and the party pursuing to the arrearages of rent if any be due for the same tenements ; and if such tenant be dead at the time of the judgment given upon such writ of error, restitution shall be made to the party pursuing, with the issues after the death of the said tenant, together with the arrearages of rent, if any were due, in the life time of the said tenant ; *Provided always*, That although the tenant who so lost by the first judgment be in life, if the party pursuing will alledge that the same tenant assented by covin that such tenements should be lost, restitution of the same tenements shall be made to the party pursuing, with the issues and arrearages as aforesaid ; but such tenant may have a writ of *scire facias* upon the same judgment so reversed or given on such writ of error if he or she will traverse the covin and assent aforesaid and not otherwise.

And on reversal of judgment tenant, if living, to be restored ;

And if tenant be dead the party pursuing to have restitution ;

And if tenant be living and assented to the first judgment by covin, the party pursuing also to have restitution.

Tenant may traverse the covin and assent.

VII. *And be it further enacted*, That if any person alien any tenement which he shall hold by the curtesy, his children shall not be barred by the deed of their father to demand and recover of the seisin of their mother, although the deed of their father mention that he and his heirs be bound to warranty, nor shall the issue of any such children be barred in such case ; and the heirs of the wife shall not be barred of their action after the death of their father and mother, by the deed of their father, if they demand by action the inheritance of their mother which their father did alien in the life time of their mother.

Alienation by husband or tenant by the curtesy not to bar the issue of the inheritance of the mother.

VIII. *And be it further enacted*, That the suit of the wife or her heirs, after the death of her husband, for lands aliened by the husband, shall not be delayed by the non-age of the heirs who ought to warrant ; but every purchaser shall be delayed until the full age of his warrantor to have his warranty.

No suit of the woman or her heirs for lands aliened by the husband to be delayed by non-age.

IX. *And be it further enacted*, That all recoveries had or prosecuted by agreement of the parties or by covin, against any tenant seised of any life estate, of any lands, tenements or hereditaments, or against any other with voucher over of any such particular tenant, or of any having right or title thereto, shall as against such persons to whom any reversion or remainder thereof may appertain, and against their heirs be void ; *Provided always*, That nothing herein contained shall extend to or prejudice any person who shall recover any lands, tenements or hereditaments without fraud or covin, by reason of any former right or title ; but every such recovery shall be of like force and effect, as if this act had not been

All recoveries against tenant for life, &c. by covin to be void against the reversioner or remainder man,

But this act not to prejudice any *bars* recovery by good title.

Nonrecoveries by assent of the reversioner or remainder man.

made ; *Provided also*, That every such recovery by the assent of any person to whom any reversion or remainder thereof shall appertain, if the same assent do appear of record in the court where such recovery shall be had, shall be of like force and effect against such person and his heirs, as if this act had not been made.

Lessee for years may falsify recoveries for his term.

X. *And be it further enacted*, That every lessee for years may falsify, for his term only, recoveries in such wife and form as a tenant of the freehold may do by the course of the common law, where such tenant of the freehold was neither privy nor party to the same recovery ; and such lessees, their executors, administrators and assigns, notwithstanding such recoveries, shall hold their said terms, according to their leases, against all such recoverers, their heirs and assigns, as they might have done against the said lessors, if such recovery had not been had nor suffered ; and the said recoverers, their heirs and assigns, after such recovery had, shall have the like remedy against the said lessees, their executors, administrators and assigns for the rents and services reserved upon the same leases, coming due after the same recoveries ; and also like actions against them for waste done, after the same recoveries, as the said lessors might have had if the same recoveries had never been had ; and no execution shall be avoided by means of any such feigned recovery, but all persons entitled to have execution of any lands, tenements or hereditaments shall have like means to avoid and falsify the same recoveries as is provided for the lessees for term of years.

And the recoverers to have like remedy for rents and waste as if no recovery was had.

No execution to be avoided by a feigned recovery.

C H A P. CLXX.

An ACT to reduce certain Laws concerning Costs into one Statute.

Passed 7th April, 1801.

Where plaintiff recovers damages he shall recover costs.

I. **B**E it enacted by the People of the State of New-York, represented in Senate and Assembly, That if any person shall sue in any court of record within this state any action real, personal or mixed, or upon any statute for any offence or wrong immediately personal to the plaintiff, and shall recover damages in such action, then the plaintiff or demandant shall have judgment to recover costs against the defendant to be taxed, and the same shall be recovered together with the damages by execution against the body or estate of the defendant.

Where plaintiff would have recovered costs, defendant to have costs, if he prevails :

II, *And be it further enacted*, That if any person shall sue in any court of record within this state any action, wherein the plaintiff or demandant might have costs, in case judgment be given for him, and he be nonsuited after appearance of the defendant, or a verdict pass against

him, then the defendant shall have judgment to recover his costs against the plaintiff (except against executors and administrators prosecuting in the right of their testator or intestate) or demandant to be taxed, and the same shall be recovered against the plaintiff or demandant by like process as the plaintiff or demandant might have had against the defendant in case judgment had been given for such plaintiff or demandant.

Except against executors and administrators.

III. *And be it further enacted*, That every person making avowry, justification or cognizance in any replevin or second deliverance, if the same be found for him or the plaintiff be nonsuited, or otherwise barred, then such person shall recover his damages and costs against the plaintiff in like manner as the plaintiff would have done if the same had been found against the defendant.

Avowants in replevin to recover costs.

IV. *And be it further enacted*, That if in any personal action prosecuted in the supreme court the plaintiff shall not recover above the sum of fifty dollars besides costs, he shall not recover any costs but shall pay costs to the defendant to be taxed, and the defendant shall have judgment and execution for the same in like manner as if a verdict had been given for him; *And further*, That if in any personal action prosecuted in the supreme court the plaintiff shall recover a debt or sum which exclusive of costs shall be upwards of fifty and not exceed two hundred and fifty dollars, then the plaintiff shall recover no more or other costs than he would have been entitled to if such action had been prosecuted and determined in any mayor's court or court of common pleas in this state; *Provided always*, That such costs shall not exceed the sum of twenty-five dollars; *And provided also*, That in all cases where any action commenced in any mayor's court or court of common pleas shall be removed into the supreme court by the defendant, if the plaintiff recover therein any sum exceeding twenty-five dollars besides costs, he shall recover costs in the supreme court together with the costs in the court below, including all such expences as the plaintiff shall have been put to in the prosecution of such action; *And provided further*, That nothing in this section shall extend to any action wherein the people of this state are interested, nor to any action where freehold or title to lands or tenements shall in any wise come in question, nor to actions of replevin, or of assault and battery, or false imprisonment, or slander, nor to any action by or against the mayor, aldermen and commonalty of the cities of New-York or Albany, or the mayor, recorder, aldermen and commonalty of the city of Hudson, or the mayor, aldermen and commonalty of the city of Schenectady.

On recovery in the supreme court not exceeding 50 dollars, plaintiff to pay costs.

On recovery above 50 dollars and not exceeding 250, plaintiff to recover only common pleas costs.

Such costs not to exceed 25 dollars.

Except when the action be removed into the supreme court by the defendant.

Certain actions excepted

Where plaintiff does not recover above 25 dollars in the court of common pleas he shall pay costs.

Exception.

In actions of trespass and assault and battery, plaintiff to recover in certain cases no more costs than damages.

In actions of slander in the supreme court plaintiff to have no more costs than damages, if the damages be under 5 dollars.

In actions of trespass, if certified to be wilful and malicious, plaintiff to have full costs.

Costs on *scire facias* and prohibition after plea or demurrer.

V. *And be it further enacted*, That if any action, not concerning any freehold or title of land, nor for any assault, battery or imprisonment, replevin, slander or malicious prosecution, nor by or against executors or administrators, be brought into any court of common pleas or mayor's court, and the plaintiff shall not recover above the sum of twenty-five dollars, he shall not recover any costs but shall pay costs to the defendant to be taxed, for which the defendant shall have execution against the body or estate of the plaintiff; *Provided always*, That where the demand of the plaintiff or the accounts between the parties exceed two hundred dollars, to be certified on the record by any judge before whom the cause shall be tried, if by reason of payments or discount the plaintiff shall recover less than twenty-five dollars exclusive of costs, then in such case the plaintiff shall recover his costs of suit to be taxed.

VI. *And be it further enacted*, That in all actions of trespass and of assault and battery prosecuted in the supreme court, wherein the judge at the trial of the cause shall not find and certify under his hand upon the back of the record that an assault and battery was sufficiently proved by the plaintiff against the defendant, or that the freehold or title of the land mentioned in the plaintiff's declaration was chiefly in question, the plaintiff in such action, in case the jury shall find the damages to be under the value of five dollars, shall not recover more costs of suit than the damages so found shall amount to; and if any more costs in any such action shall be awarded the judgment shall be void, and the defendant may have his action against the plaintiff for such vexatious suit and recover his damages and costs of such suit.

VII. *And be it further enacted*, That in all actions upon the case for slanderous words to be prosecuted by any person in the supreme court, if the jury upon the trial of the issue in such action or the jury that shall inquire of the damages do find or assess the damages under five dollars, then the plaintiff in such action shall recover only so much costs as the damages so given or assessed amount unto, without any further increase of the same.

VIII. *And be it further enacted*, That in all actions of trespass to be prosecuted in any court of record within this state, wherein at the trial of the cause it shall appear and be certified by the judge under his hand upon the back of the record, that the trespass upon which any defendant shall be found guilty was wilful and malicious, the plaintiff shall recover not only his damages but his full costs of suit.

IX. *And be it further enacted*, That in all suits upon any writ of *scire facias* and suits upon prohibition the plaintiff obtaining judgment or any award of execution after

plea pleaded, or demurrer joined therein, shall likewise recover his costs of suit ; and if the plaintiff shall become nonsuit, or suffer a discontinuance, or a verdict shall pass against him, the defendant shall recover his costs and have execution for the same in manner aforesaid.

X. *And be it further enacted*, That where several persons are made defendants to any action of trespass, assault, false imprisonment or ejectment, and any one or more of them shall be upon the trial thereof acquitted by verdict, every person so acquitted shall recover his costs of suit in like manner as if a verdict of acquittal had been given in favour of all the defendants, unless the judge before whom such cause shall be tried shall immediately after the trial thereof in open court certify upon the record under his hand, that there was a reasonable cause for the making such person a defendant to such action.

In what cases one or more of several defendants being acquitted shall have costs.

XI. *And be it further enacted*, That where any person shall sue out of any court any process against any person who shall be imprisoned on the same, or upon the return of the process shall put in bail or cause his appearance to be entered, as the case may require, then if the plaintiff shall not before the end of the next term after the return of the process or after such bail put in or appearance entered, put into court his declaration against the defendant, or if after declaration put in he shall suffer the suit to be discontinued or otherwise shall be nonsuited in the same, then and in every such case the court may at its discretion adjudge costs to the defendant to be taxed against the plaintiff and for which the defendant may have execution as aforesaid.

Plaintiff not declaring

Or discontinued or being nonsuited

To pay costs.

XII. *And be it further enacted*, That if any person shall prosecute in any court of record any action wherein upon any demurrer by either party to the action, judgment shall be given against the plaintiff or demandant, or if at any time after such judgment the plaintiff or demandant shall sue any writ of error on the judgment and the said judgment shall be affirmed or the writ of error shall be discontinued, or the plaintiff nonsuited therein, the defendant in such action or writ of error shall recover costs against the plaintiff or demandant and have execution for the same as aforesaid.

Costs given against plaintiff on demurrer and writs of error.

XIII. *And be it further enacted*, That if any person bound by any judgment in any court of record shall, before execution had, sue any writ of error to reverse the judgment and the same judgment be affirmed, or the writ of error be discontinued, or the plaintiff in error nonsuited, then and in such case the defendant in error shall recover his costs and damages for the delay and vexation, to be assessed and taxed by the discretion of the court before whom the said writ of error is returnable, and shall have execution for the same in manner aforesaid.

And on writs of error in delay of execution.

On affirmance of judgment in error after verdict, defendant to recover double costs.

XIV. *And be it further enacted,* That if any person shall prosecute any writ of error for reversal of any judgment given after verdict in any of the courts aforesaid and the judgment be affirmed, then such plaintiff in error shall pay to the defendant in error his double costs, to be assessed by the court where such writ of error shall be depending for the delaying of execution.

On quashing writs of error defendant to have costs.

XV. *And be it further enacted,* That upon quashing any writ of error for variance from the original record or other defect, the defendant in such writ shall recover against the plaintiff his costs as he would have done if the judgment had been affirmed, and to be recovered in like manner.

In chancery plaintiff to pay full costs on dismission of his bill.

XVI. *And be it further enacted,* That upon the plaintiff's dismissing his own bill in equity or the defendant dismissing the same for want of prosecution, the plaintiff shall pay to the defendant full costs to be taxed.

Defendant to pay costs in suits for debts due to the state.

XVII. *And be it further enacted,* That in all suits commenced upon any specialty made to the people of this state or to any person for their use, the people or other plaintiff shall recover the debt, damages and costs as any other person in the like cases.

Defendant not to have costs in suits brought for debts due to the state.

XVIII. *And be it further enacted,* That where any action shall be prosecuted in the name of any person for any debt or sum of money due to the people of this state, and the plaintiff shall be nonsuited therein or if a verdict shall pass against the plaintiff, the defendant shall not recover any costs against such plaintiff.

This act not to extend to certain actions.

XIX. *And be it further enacted,* That nothing in this act contained shall extend to any popular action, nor to any action to be prosecuted by any person in behalf of himself and the people of this state upon any penal statute, nor to any indictment, presentment or inquisition.

C H A P. CLXXIII.

An ACT for the Support of Government.

Passed 7th April, 1801.

Annual salaries allowed

To the governor;

Chancellor;

Chief justice and judges of supreme court

I. **B**E it enacted by the People of the State of New-York, represented in Senate and Assembly, That there shall be allowed to the several officers of government herein-after mentioned, the following annual salaries: To the person administering the government of this state the sum of three thousand seven hundred and fifty dollars; to the chancellor the sum of two thousand dollars; to the chief justice the sum of two thousand dollars, and to each of the other four judges of the supreme court the sum of one thousand eight hundred and seventy-five dollars; but this provision shall not be construed to extend to any judges of the said court that may be appointed after their number shall

amount to five; to the treasurer the sum of one thousand six hundred dollars, including clerk hire, office hire and stationary; to the secretary of this state the sum of one thousand five hundred dollars; to the attorney general the sum of two thousand dollars; to the private secretary of the person administering the government of this state the sum of three hundred and twelve dollars and fifty cents; and the said annual sums shall be payable in equal quarterly payments at the treasury by the treasurer on the warrant of the comptroller, on the first days of April, July, October and January in every year, and shall be computed as becoming due to the said several officers in proportion to the times for which they shall hold their respective offices; and the said annual sums to the treasurer may be retained by him in quarterly payments as aforesaid on the warrant of the comptroller, and the comptroller shall issue his warrant to the treasurer to pay the said annual sums in quarterly payments aforesaid, upon the receipt of a certificate signed by the person administering the government of this state and under the privy seal of the state, certifying that at the time when the last quarterly payment became due, the person or persons in whose favour the certificate may be given held the said office or offices for which such person or persons may demand a compensation; and if any person shall cease to hold any of the said offices at any time between the times above prescribed for quarterly payments, such certificates shall specify the time when he ceased to hold such office, but no such certificate shall be necessary for the person administering the government of this state and the comptroller shall draw his warrant for such sums as shall become due to him as aforesaid without any certificate.

Treasurer;

Secretary of state;
Attorney general;
Governor's private secretary;

And payable in quarterly payments on the warrant of the comptroller.

Such warrant founded on the governor's certificate.

II. *And be it further enacted*, That it shall not be lawful for the chancellor or judges of the supreme court to demand or receive any fees or perquisites for any thing done by either of them in virtue of their offices.

Chancellor and judges not to receive fees

III. *And be it further enacted*, That at every session of the legislature, the president of the senate and speaker of the assembly shall each be entitled to receive three dollars and seventy-five cents for every day he shall attend in his station; and that each member of the senate and assembly shall be entitled to receive two dollars and fifty cents for every day he shall attend either of the said houses respectively; and the like compensation to the president of the senate, the speaker of the assembly and to the other members of the legislature for every twenty miles of the distance from the place of his residence to the place of the meeting of the legislature, and such distance shall be estimated by the most usual road, and shall be computed both for the travelling to and returning from the place of their said meeting; and if any member of the senate or assembly

Compensation of the president of the senate and speaker of the assembly. And members of the legislature.

shall, after his arrival at the place of their said meeting, be prevented by sickness from attending either of the said houses respectively, he shall be entitled to the like daily allowance as aforesaid for every day he shall be so prevented, and the comptroller shall issue his warrant to the treasurer for the payment of such sum as may so become due to each member respectively upon the receipt of a certificate signed by the president of the senate or the speaker of the assembly, as the case may be, setting forth the number of days that the member in whose favour it shall be given may have attended either house respectively, and the estimated distance of his place of residence from the place of the meeting of the legislature.

Payable on
the warrant
of the comp-
troller,
Upon the re-
ceipt of a cer-
tificate.

Compensation
of the clerks
of the senate
and assembly,

IV. *And be it further enacted,* That there shall be allowed and paid to each of the clerks of the senate and assembly the sum of three dollars and seventy-five cents per day for their respective services during the session of the legislature, and also the amount of such sums for the contingent expences of the two houses as may, from time to time, during the sessions of the legislature, be certified to be necessary by the president of the senate and speaker of the assembly respectively, and also for engrossing each sheet or folio of seventy-two words twelve and an half cents, and six and an half cents per folio of seventy-two words for copying the journals for the governor, resolutions to either house for concurrence and copies furnished the state printer, and for issuing notices of vacancies in the senate as directed by law fifty cents, and such accounts with the vouchers for the same shall be audited and allowed by the comptroller; and there shall also be allowed and paid to the serjeant at arms and the door keepers of the senate and assembly, each the sum of two dollars for every day they shall attend the legislature agreeable to such certificate thereof as they shall respectively produce, certified by the president of the senate or speaker of the assembly, as the case may require, for the payment of which several compensations and sums of money the comptroller shall issue his warrant to the treasurer after the same are allowed and certified as aforesaid.

And serjeant
at arms and
door keepers.

Compensation
of the council
of appoint-
ment.

V. *And be it further enacted,* That the members of the council of appointment for each day of their attendance in council during the recess of the legislature, and for travelling from and to their respective places of residence, shall be entitled to the like compensation as hath been before prescribed for the members of the legislature, and the comptroller shall issue his warrant to the treasurer for the payment of the sums that may so become due to them respectively upon the receipt of a certificate signed by the person administering the government of this state, setting forth the number of days that they may have severally attended in council and the distance of their

several places of residence from the place of their meeting and the sums due to them severally on that account.

VI. *And be it further enacted,* That the comptroller shall annually issue his warrant to the treasurer for payment to the secretary of this state the amount of the necessary expences of his office to be audited by the comptroller ; *Provided,* They do not exceed in any one year the sum of one thousand two hundred and fifty dollars, and the said secretary shall also be entitled to the rents and profits of the house in the city of New-York now in his possession, the property of which is vested in the people of this state ; but the office of the said secretary shall continue to be kept and held in the public building erected for that purpose in the city of Albany.

Secretary of state allowed for necessary expences and the rent of a house in New-York.

Secretary's office where to be kept.

VII. *And be it further enacted,* That the said secretary shall continue to receive all such fees as he is or shall from time to time be by law permitted to take, and shall keep an account thereof, and shall exhibit such account quarterly to the comptroller of this state, who having examined and filed the same in his office shall certify to the treasurer the amount thereof and the said secretary shall pay the same to the treasurer ; *Provided,* That no fee shall be taken for any civil or military commission whatever.

Secretary to receive and account for fees.

Proviso.

VIII. *And be it further enacted,* That the sum herein before directed to be paid, shall be payable out of any revenue arising or to arise from any of the funded debt of the United States belonging to the people of this state, or from any monies loaned by this state, or from any revenue arising to the people of this state in any manner whatever, and the said revenue or so much thereof as shall be necessary for that purpose is hereby appropriated for paying the several sums of money by this act directed to be paid.

Revenue appropriated for the above purposes.

IX. *And be it further enacted,* That the treasurer shall from time to time pay to the clerks of the respective counties in this state such sums of money as shall be certified by the comptroller to be due to them for registering or recording any mortgage to the people of this state in behalf of this state, and for their services and expences in performing the duties required of them by the act, entitled *An act concerning oaths.*

Clerks of counties for certain public services, how paid.

C H A P. CLXXIV.

An ACT concerning Executors and Administrators, and the Distribution of Intestate's Estates.

Passed 7th April, 1801.

I. **B**E it enacted by the People of the State of New-York, represented in Senate and Assembly, That the execu-

Inventories by whom and

How to be taken.

tors and administrators of any testator or intestate, with the aid and in the presence of two persons at least being legatees or creditors of such testator or intestate, and in case of their absence or default two other persons being next of kin to the deceased, and in their absence or default two other competent persons, shall make or cause to be made a true and perfect inventory of all the goods, chattels and credits of such testator or intestate, and shall cause the same to be indented, one part whereof shall be delivered to the judge of the court of probates or surrogate in whose office the will of the testator was proved or administration granted, within six months after probate of the will or administration granted, upon the oath of such executors or administrators to be taken before the said judge or surrogate, that such inventory is just and true, and the other part whereof shall remain with said executors or administrators.

No executor or administrator to be cited to an account except by the inventory unless by a party interested.

II. *And be it further enacted,* That no executor or administrator shall be cited in the court of probates or be compelled to render an account of the personal estate of his testator or intestate otherwise than by an inventory or inventories thereof, unless it be at the instance or prosecution of some person in behalf of a minor or having a demand out of such personal estate as creditor, legatee or next of kin.

Administrators to have actions and be accountable as executors.

III. *And be it further enacted,* That administrators shall have actions to demand and recover in like manner as executors the debts due to their intestate, and shall answer and be accountable to others to whom the intestate was holden or bound in the same manner as executors.

Actions of account may be maintained by or against executors and administrators.

IV. *And be it further enacted,* That actions of account shall and may be brought and maintained by and against executors or administrators in all cases in which the same might have been maintained by or against their respective testators or intestates.

And actions for goods taken away by or from their testator or intestate.

V. *And be it further enacted,* That executors and administrators shall have actions of trespass for taking and carrying away the goods of their testator or intestate in his life time, and that any person his executors or administrators shall have the like actions of trespass against the executors or administrators or any testator or intestate, who in his life time shall have wasted, destroyed, taken or carried away or converted to his own use the goods or chattels of any such person, and shall have the like process, judgment and execution as in other actions against executors and administrators.

Executors of executors to have actions for debts, &c. of the first testator and be answerable

VI. *And be it further enacted,* That executors of executors shall have actions of debt, account and trespass for goods carried away of the first testator, and executions of judgments obtained by or of recognizances made to the first testator in the same manner as he might have if liv-

ing, and that such executors of executors shall answer to others for the same as the first executors should do if living.

to others for the same.

VII. *And be it further enacted*, That the executors and administrators of every person who as executor either of right or in his own wrong, or as administrator, shall have wasted or converted to his own use any goods, chattels or estate of any deceased person, shall be chargeable in the same manner as their testator or intestate would have been if living.

Executors and administrators of executors or administrators liable for waste, &c.

VIII. *And be it further enacted*, That an administrator *de bonis non* may sue forth a *scire facias* and have execution on any judgment obtained by or in the name of any previous executor or administrator of the same estate.

Administrators, *de bonis non* may have *scire facias*, &c.

IX. *And be it further enacted*, That in all actions depending or to be commenced in any court of record, if any plaintiff happen to die after an interlocutory judgment and before a final judgment obtained therein, the said action shall not abate by reason thereof, if such action might be originally prosecuted or maintained by the executors or administrators of such plaintiff; and if the defendant die after such interlocutory judgment and before final judgment therein obtained, the said action shall not abate, if such action might be originally prosecuted or maintained against the executors or administrators of such defendant; and the plaintiff, or if he be dead after such interlocutory judgment, his executors or administrators shall and may have a *scire facias* against the defendant, if living, after such interlocutory judgment, or if he died after, then against his executors or administrators to show cause why damages in such actions should not be assessed and recovered by him or them; and if such defendant, his executors or administrators, shall appear at the return of such writ and not show or alledge any matter sufficient to arrest the final judgment, or being returned warned, or upon two writs of *scire facias* it be returned that the defendant, his executors or administrators, had nothing whereby he or they might be summoned and could not be found in the county, shall make default, that thereupon a writ of inquiry of damages shall be awarded, which being executed and returned, judgment final shall be given for the said plaintiff, his executors or administrators, prosecuting such writ or writs of *scire facias*, against such defendant, his executors or administrators respectively.

Actions not to abate after interlocutory judgment by reason of death.

And the plaintiff or his executors or administrators may have *scire facias*.

X. *And be it further enacted*, That the executors and administrators of every testator or intestate may have and maintain the writ of *idemptitate nominis* in like manner as the same might be maintained by the testator or intestate, if living, in case of the outlawry of any person having the like name as such testator or intestate had.

Executors & administrators may have a writ of *idemptitate nominis*.

In actions
against several
executors or
administra-
tors, they
may be con-
sidered as one
person ;
And such as
first appear
shall answer.

Provido.

Who shall be
considered as
executors of
their own
wrong.

No real estate
to be affected
by any judg-
ment against
executors or
administra-
tors.

Acts of ad-
ministrators
before notice
of a will to
be good :
But the ex-
ecutors to have
remedy
against them
for goods un-
administered.

Distribution
of intestates'
estates, how
to be made.

XI. *And be it further enacted,* That in actions against divers executors or administrators all the executors or administrators shall be considered as one person representing the testator or intestate, and in case any of them shall be taken or summoned on any writ or process against them, such as do first appear shall answer the plaintiff, and if judgment shall pass for the plaintiff the judgment and execution thereon shall be awarded against such of them as have appeared and all others named in the writ or process, of the goods of the testator or intestate in the same manner as if they had all appeared ; *Provided however,* That the plaintiff in any such action may at his election sue and prosecute in the manner formerly used in like cases.

XII. *And be it further enacted,* That every person who shall obtain or receive any goods or debts of the estate of any intestate, or a release or other discharge of any debt or duty which belonged to any intestate from any administrator of such intestate upon any fraud, whereby the creditors of such intestate or any of them may be injured, or without a full and valuable consideration, such person shall be chargeable as executor in his own wrong to the value of such goods and debts so obtained or whereof he shall be so released or discharged, deducting nevertheless all just debts due to him from the intestate and all payments made by him as the same ought to be allowed to lawful executors or administrators in the course of administration.

XIII. *And be it further enacted,* That no lands or other real estate of any testator or intestate shall be sold or in any wise affected by virtue of any judgment or execution against executors or administrators.

XIV. *And be it further enacted,* That all sales made *bona fide* and lawful acts done by administrators before notice of a will, shall remain valid and unimpeached by executors on any will afterwards appearing ; *Provided,* That such executors shall have the same remedy against the administrators for the goods, chattels and credits remaining unadministered as before this act.

XV. *And be it further enacted,* That just and equal distribution of what remaineth clear of the goods and personal estate of any person dying intestate after all debts, funeral charges and just expences first allowed and deducted, shall be made amongst the wife and children or children's children, if any such there be ; or otherwise to the next of kin to the intestate in equal degree or legally representing their stocks, that is to say, one third part of the surplusage to the wife of the intestate, and all the residue by equal portions to and amongst the children of such persons dying intestate and such persons as legally represent such children, in case any of the said children be

then dead, other than such child or children who shall have any estate by settlement or shall be advanced by the intestate in his life time by portion or portions equal to the share which shall by such distribution be allotted to the other children to whom such distribution is to be made; and in case any child shall have any estate by settlement from the said intestate or shall be advanced by the said intestate in his life time by portion not equal to the share which will be due to the other children by such distribution as aforesaid, then so much of the surplusage of the estate of such intestate shall be distributed to such child or children as shall have any land by settlement from the intestate, or were advanced in the life time of the intestate, as shall make the estate of all the said children to be equal as near as can be estimated; and in case there be no children nor any legal representatives of them then one moiety of the said estate shall be allotted to the wife of the said intestate, and the residue of the said estate shall be distributed equally to every of the next of kin of the intestate who are in equal degree and those who represent them, but no representation shall be admitted among collaterals after brothers' and sisters' children; and in case there be no wife then all the said estate shall be distributed equally to and amongst the children, and in case there be no child, then to the next of kin in equal degree of or unto the intestate and their legal representatives as aforesaid, and in no other manner; *Provided however*, That if after the death of a father any of his children shall die intestate without wife or children in the life time of the mother, every brother and sister and the representatives of them shall have an equal share with her.

Proviso where the estate of a child shall be distributed among the mother, brothers and sisters.

XVI. *And be it further enacted*, That nothing in this act contained respecting the distribution of intestates' estates shall be construed to extend to the estates of *femes covert*s that shall die intestate, but that their husbands may demand and have administration of their rights, credits and other personal estate and recover and enjoy the same as fully as they might have done before the passing of this act.

This act not to extend to the estates of fems covert dying intestate.

XVII. *And be it further enacted*, That no distribution of the goods, chattels and credits of any intestate shall be made until the expiration of one year after granting administration thereof; and where no time shall be limited by any last will or testament for the payment of any legacy therein bequeathed the executors shall have the space of one year to discharge the same; *And further*, That every person entitled to any legacy or bequest or to any share on such distribution, shall at the time of payment or delivery thereof give bond in double the sum of such share or legacy with two sufficient sureties to the executors or administrators, conditioned that if any debts owing by

No distribution to be made within one year.

Where executors shall have one year to pay legacies.

Legatees and next of kin to give security to refund

the testator or intestate shall afterwards be recovered or duly made to appear and which there shall be no other assets to pay, and also in the case of a legacy, if no sufficient assets shall thereafter remain to pay any other legacies which may be due, that then such person shall refund the legacy or share so paid or delivered or such rateable part or proportion thereof with the other legatees or representatives of the deceased, as may be necessary for the payment of the said debts and the costs and charges incurred by reason thereof, and in case of a legacy the proportional part of such other legacies if there be any.

Persons entitled to legacies or shares of intestates' estates may sue in any court of record.

In case of a legacy when to recover a proportional part only.

No such suit to be maintained until after reasonable demand and security given.

Nor by guardian or next friend until security given to the infant.

Court may appoint auditors to examine and report

XVIII. *And be it further enacted*, That it shall be lawful for any person to whom any legacy of any sum of money or other personal goods or chattels, or residuary part of any personal estate, hath been or shall be given by any last will or testament, or who shall be entitled to any share on the distribution of the estate of any intestate, his executors or administrators, to recover the same when due in an action of debt, detinue or account, as the case may require, in any court of record in this state, if there be more than sufficient assets in the hands of the executors or administrators to discharge the debts of the testator or intestate; and in the case of a legacy, if such assets be not sufficient to pay all the legacies that may be given, then an abatement shall be made in proportion to the legacies so given and such person shall recover only a proportional part, and where such person shall be an infant at the time such legacy or share shall become due, such action may be brought by guardian or next friend as in other cases; *Provided however*, That no such action shall be maintained against any executors or administrators until after a reasonable demand of such legacy or share, and an offer of such sureties as above mentioned be made, and if the same be refused then the person entitled to such legacy or share shall file the bond with such sureties, the same being first approved of by the court, in the office of the clerk thereof, before obtaining any process against such executors or administrators, otherwise the said process shall abate; *And provided also*, That no action shall be brought in consequence of this act by any infant by guardian or next friend, until such guardian or next friend shall have executed and filed in the office of such clerk a bond to the said infant in such sum and with such sureties as the court shall approve, conditioned that such guardian or next friend shall duly account to the said infant when of age, or to the executors or administrators of such infant in case of his death, for all monies which may be recovered in such suit.

XIX. *And be it further enacted*, That the court in which any such action shall be brought, upon the plea of want of assets to pay all the debts and legacies, or either, may

appoint auditors to examine the accounts of the executors or administrators, which auditors after full hearing and examination thereof at such times and places as by them shall be appointed, notice whereof shall be given to the parties, shall report how much assets will remain in the hands of the executors or administrators after payment of all the debts and what part thereof the plaintiff is entitled to recover; and the court shall thereupon give judgment and award execution for the same; but if the plaintiff shall discontinue his suit or become nonsuited, or have judgment against him, the defendants shall have judgment to recover their costs of suit against him, and if the plaintiff shall recover only part of his demand for want of further assets and such assets shall afterwards come to the hands of the defendants, the plaintiff shall have a re-*summons* against them and recover the residue of the monies due to him or his proportion of such assets, and the court is hereby empowered to correct and amend any mistakes or errors in such report or the accounts so reported, and on consideration of the same and of the proceedings in such action, to award the costs thereof or the costs of either party to be paid by them or either of them, or out of the estate of the testator or intestate, according to justice and equity; and in case the executors or administrators shall have refused or neglected to pay the plaintiff's demand or a proportional part thereof when due, without reasonable cause, to award costs against them to be paid out of their own estate.

on the accounts of executors & administrators.

And shall give judgment accordingly. When the defendants shall recover costs.

When the plaintiff shall have a re-*summons*,

Court to correct errors in the report or accounts.

And may award costs to be paid out of the estate or by either party.

XX. *And be it further enacted*, That in all cases where administration shall be granted with a will or testament annexed, the will of the deceased in such testament expressed shall be observed and performed, and that this act shall extend to administrators with such will annexed in the same manner as if they were executors named in such will.

This act to extend to administrators with a will annexed who shall observe such will.

XXI. *And be it further enacted*, That in all cases where administration hath been or shall be granted to any person not the widow of or not of kin to the intestate, and no person hath or shall within one year after granting the letters of administration appear to claim the personal estate of such intestate as next of kin, then and in every such case the administrator or administrators shall pay the amount of the personal estate, after deducting the debts and personal charges of the intestate, into the treasury of this state for the benefit of those who may thereafter appear to be entitled to the same.

When the next of kin do not appear in one year, the amount of the personal estate to be paid into the treasury.

Passed 7th April, 1801.

Joint tenants, tenants in common and coparceners how to proceed to make partition in the supreme court.

Copy of petition & notice of application on whom and how to be served.

What shall be sufficient service on non-resident parties.

Provido.

On presenting the petition court to order the parties notified to appear and answer.

The parties to plead and proceed to issue as in other actions.

BE it enacted by the People of the State of New-York, represented in Senate and Assembly, That where any lands, tenements or hereditaments shall be held in joint-tenancy, tenancy in common or in coparcenary, it shall be lawful for any one or more of the parties interested therein to present a petition to the supreme court describing such lands, tenements or hereditaments, and setting forth the rights and titles of all the said parties therein, and praying that the same may be divided by commissioners to be appointed by the said court in pursuance of this act, according to their respective rights therein ; a copy of which petition shall be served forty days previous to the term in which the same shall be presented, on all the parties concerned in such lands, tenements or hereditaments who shall not join in the said petition and shall reside in this state, or on the guardians of such of the said parties as are minors, together with a notice subscribed by the petitioners and directed to each of the said parties or their guardians as aforesaid, that an application will be made to the said court on the first day of the term therein mentioned, or as soon thereafter as counsel can be heard, for the appointment of such commissioners ; and in case any of the said parties to be notified as aforesaid shall reside out of this state or cannot be found therein, and the same be made to appear by affidavit to the court on presenting such petition as aforesaid, a copy of such petition and of such notice shall be previously published for the space of three months in one of the public newspapers printed in each of the cities of New-York and Albany, which publication shall be deemed sufficient notice to such parties ; *Provided however,* That in all cases the service of a copy of such petition and notice on any of the said parties not resident in this state, shall as to such parties, be also deemed a sufficient service of the same without publication thereof as aforesaid.

II. And be it further enacted, That on presenting the said petition and proof being made by affidavit to the satisfaction of the said court that copies of the said petition and notice have been duly served or published as aforesaid, the said court shall by rule, order that the parties so notified appear and answer the said petition within the usual time allowed for pleading in the said court, and such parties or any of them within such time or within such further time as may be allowed for that purpose by the said court, may appear and answer or plead to the said petition as to a declaration, and such further pleadings may thereupon be had between the parties respectively

according to the rules and practice of the said court as in other actions or suits depending therein, until an issue or issues in law or in fact be joined between the said parties respectively, or some of them; and any of the parties who shall answer the said petition may plead thereto *non tenent insimul*, and give any special matter in evidence under the said plea which might be otherwise pleaded, giving notice with the said plea of the several matters so intended to be given in evidence, and all such issues shall be tried and the like proceedings for the trial thereof shall be had as in other actions in the said court; and the said court shall have power to award new trials after the trial of such issues of fact as in other cases; and after the final determination of all such issues, the said court shall ascertain and determine the respective rights of the said parties in such lands, tenements or hereditaments and give judgment that partition thereof be made between them according thereto, or between such of them as shall have any right therein; and if the said parties so notified as aforesaid or any of them shall not appear and answer or plead to the said petition within the time allowed for pleading as aforesaid, or if the matter of the said petition be confessed by all the said parties or any of them, the said court shall give the like judgment by default or confession against such parties; and in every case after determining the rights of all the said parties and judgment be given thereon, the said court shall by rule or order appoint three reputable freeholders of the city or county in which the said lands, tenements or hereditaments or the greatest part in value thereof shall be situated, commissioners to make the said partition, quality and quantity relatively considered according to the respective rights and interests of the parties to be adjudged as aforesaid.

Issues to be tried as in other actions. Court may award new trials; And shall determine the rights of the parties and give judgment that partition be made.

And thereupon to appoint commissioners to make partition.

III. *And be it further enacted*, That the commissioners to be appointed as aforesaid shall before they proceed to make such partition be severally sworn or affirmed, as the case may be, before one of the judges of the said court or a commissioner appointed to take affidavits to be read in the said court, *honestly and impartially to execute the trusts reposed in them as commissioners for making partition of the lands, tenements and hereditaments as directed by the said court*; which oath or affirmation shall be taken and subscribed by the said commissioners and filed in the office of one of the clerks of the said court at or before the time of making the return by them of such partition as herein after mentioned; and the said commissioners shall thereupon proceed to make the said partition among the parties, of the said lands, tenements and hereditaments according to their respective rights therein, and the said partition shall be made by the said commissioners or any two of them and a return thereof shall be made by

Commissioners to be sworn.

Their oath to be filed.

Partition and return thereof to be made.

them in writing, under their hands and seals, to the said court, and particularly describing the part or share allotted to each owner ; and the said return shall be acknowledged by the said commissioners or any two of them before one of the judges of the said court or before one of the officers authorized to take the proof and acknowledgment of deeds and conveyances by law ; and the said court upon good cause shown by any of the said parties against the justice or regularity of such partition and return may set aside the same and appoint commissioners anew to make such partition, who shall in all things proceed as such commissioners are above directed to proceed ; but if no such cause be shown the said court shall confirm the said partition and return and give judgment that the same be firm and effectual forever between all the parties thereto ; and such judgment shall be binding and conclusive on all such parties and their legal representatives ; *Provided always*, That where any houses and lots not exceeding fifty acres are so circumstanced that a division thereof cannot be made without great prejudice to the owners of the same, and the commissioners appointed to make partition of the same shall so report to the court, if it shall then appear to the court by satisfactory proof that such lot or lots do not contain more than fifty acres and cannot be divided among the owners without great and manifest prejudice to them, and also that the same do not, except in the cities of New-York, Albany and Hudson, and the town of Brooklyn in Kings county, exceed in value the sum of seven thousand five hundred dollars, the said court shall thereupon order the said commissioners to sell such houses and lots at public vendue to the highest bidder, giving at least thirty days notice of the time and place of such sale, and the said commissioners after such sale shall report the same to the said court ; and if the said court shall approve of such sale they shall give judgment that the same be valid and effectual in law, and therein or by a rule or order of the said court, direct the said commissioners to execute good and sufficient conveyances in the law to the purchaser or purchasers for the premises so sold, which shall operate as an effectual bar both in law and equity against the said parties and all persons claiming under them ; *And provided also*, That the said limitation as to the value of the said houses and lots which may so be sold, shall not apply to any lands, tenements or hereditaments or to any houses or lots situated in the said cities of New-York, Albany or Hudson or the said town of Brooklyn.

IV. *And be it further enacted*, That the costs and charges attending any of the proceedings directed by this act shall first be paid by the petitioners pursuing the same, and the said court on every final judgment to be rendered as aforesaid, either for partition of such lands, tene-

Court may set aside the same on good cause shown and appoint new commissioners.

If no cause shown, to give judgment that the partition be firm and effectual.

Where houses and lots, not exceeding a certain quantity & value, cannot be divided without prejudice, how they may be sold.

Such sale to be adjudged valid and effectual.

Limitation of value not to apply to the cities of New-York, Albany or Hudson or town of Brooklyn.

Costs how to be recovered and paid.

ments or hereditaments or upon a sale thereof, or for the partition of part and upon a sale of the residue thereof, shall also adjudge each of the parties concerned therein, other than the said petitioners, to pay to the said petitioners a proportion of the said costs according to their respective rights therein, which costs shall be taxed as in other cases for the like or similar services, and may be levied by execution against the person, goods, chattels, lands and tenements of the respective parties who shall be adjudged to pay the same, as in other cases where costs are to be recovered, and in case of any such sale the court may order the same to be paid or retained out of the monies arising from such sale and due to the parties who ought to pay the same.

V. *And be it further enacted*, That the monies arising from every such sale shall be ordered by the said court to be paid by the said commissioners to the said parties, their guardians or legal representatives, in proportion to their respective rights in the lands, tenements or hereditaments so sold, deducting from their respective shares the costs and charges which may be ordered to be retained out of the same as aforesaid; and if any of the said parties shall be absent from this state without such legal representative, the proportion of the said monies due to every such party shall be put out at interest on sufficient security of real property by order and under the direction and controul of the said court for the benefit of such party.

Monies arising from such sale how to be disposed of.

VI. *And be it further enacted*, That it shall be lawful for the said court for any of the purposes intended by this act, and before or after the commencement of any proceeding by virtue thereof, to appoint guardians for such minors, whether such minors shall reside in or out of this state; and the said court on appointing any guardian as aforesaid shall for the benefit of such minors take sufficient security of every such guardian by bond to the people of this state, conditioned for the faithful discharge of the trust committed to such guardian, and to render a just and true account of such guardianship in all courts and places when thereunto required, which bond or bonds shall be filed in the clerk's office of the said court; and the guardians of all minors so to be appointed shall be and hereby are respectively authorized and empowered in behalf of the respective minors whose guardians they shall be, to do and perform every act respecting the proceedings for the partition of any lands, tenements or hereditaments under this act or any matter or thing relating thereto, which shall be binding on such minors and be deemed as valid to every purpose as if the same had been done by such minors after they should have arrived at full age.

Court may appoint guardians to minors for the purposes of this act.

Who shall give security for the faithful discharge of their trust.

Their power and duty.

Compensation
to the com-
missioners.

VII. *And be it further enacted*, That the commissioners so to be appointed shall be allowed such sum for their services and expences as the said court shall direct, and which shall be paid by the said petitioners and shall be allowed as part of the costs to be taxed as aforesaid.

Joint tenants
and tenants in
common for
years or for
life may have
the like reme-
dy under this
act.

VIII. *And be it further enacted*, That all joint tenants and tenants in common who now hold or hereafter shall hold jointly or in common for years or for life or lives, and all joint tenants and tenants in common where one or more of them have or shall have estates for years or for life or lives with the other or others of them who have or shall have estates of inheritance or in fee, and each of them, shall in every such case have the like remedy for the partition of any lands, tenements or hereditaments so possessed or held by them in joint tenancy or tenancy in common, and in all respects subject to the like proceedings and regulations as are provided by this act.

The several
mayor's
courts and
courts of com-
mon pleas to
have the like
power.

IX. *And be it further enacted*, That the court of common pleas called the mayor's court in the city of New-York, and the respective mayor's courts of the cities of Albany and Hudson, and the courts of common pleas in the several counties of this state, shall in respect to lands, tenements and hereditaments situate in their respective cities and counties, in every of the cases mentioned in this act, have the like power to make partition of such lands, tenements and hereditaments, and in the same manner and form and subject to the like proceedings and regulations as are herein before prescribed with respect to the supreme court, and to try and determine any issue or issues to be joined as aforesaid in the same manner as other issues may be tried and determined in such courts respectively; and all proceedings and judgments so to be had in any of the said courts shall be of the like force and effect as if the same were had in the supreme court; *Provided however*, That it shall be lawful for any of the parties in any proceeding to be had in any of the said courts by virtue of this act, at any time before judgment be thereupon given that partition of the lands, tenements or hereditaments in question be made, or before a juror on any such issue be sworn, to remove into the supreme court all such proceedings by writ of *certiorari* to be allowed by one of the judges of the said supreme court, and upon the removal of the same into the supreme court the like proceedings shall be there had as if the petition had been first presented to the said supreme court.

But the pro-
ceedings may
be removed
by *certiorari*
into the su-
preme court
by either
party.

Former parti-
tions of lands
between joint
tenants and
coparceners
confirmed.

X. *And be it further enacted*, That every partition of lands, tenements or hereditaments previously held in joint tenancy or coparcenary and heretofore made by commissioners appointed by the mayor's court of the city of New-York, or by any court of common pleas according to the act, entitled *An act for the partition of lands*, and

the several acts amending the same, shall be deemed and taken to be as valid and effectual as if such lands, tenements or hereditaments had been so held in tenancy in common.

XI. *And be it further enacted*, That on all final judgments to be given in any of the said courts upon any such partition being made or upon a sale of the whole or part of the premises mentioned in any petition presented by virtue of this act, or upon any such sale of part and partition of the residue thereof, it shall be lawful for any of the parties to such judgment to bring a writ or writs of error thereon within the same time and under the like restrictions and regulations as in other cases.

Writs of error may be brought as in other actions.

C H A P. CLXXVIII.

An ACT for the Assessment and Collection of Taxes.

Passed 8th April, 1801.

I. **B**E it enacted by the People of the State of New-York, represented in Senate and Assembly, That the taxes hereafter to be levied in this state shall be assessed, levied and paid upon the valuation of real and personal estates in the manner hereinafter mentioned, and that the valuation of houses and lands within this state lately made under the authority of the United States, as the same is now completed, shall be deemed to be the value of all such houses and lands for the purposes declared in this act; *Provided*, That the assessors of each town and ward in this state shall from time to time make such alterations in the said valuation as shall appear to them to be just and necessary to equalize the taxes upon real estates within their respective towns and wards, but the aggregate or gross amount of the said valuation under the authority of the United States, as the same is now completed, shall not be lessened by any such alteration; and the said assessors shall set down in one column of their assessment roll, opposite to the name of the possessor thereof, the just and true value of all houses and lands in such town or ward liable by law to be taxed, and if there be no possessor then the name of the reputed owner shall be set down as the possessor thereof; and if the assessors shall discover any houses or lands not contained in the said roll, they shall ascertain and set down therein the true value thereof according to the principles prescribed by the act of congress for making such valuations and shall add the same to the said aggregate amount.

Taxes to be levied and paid on a certain valuation

How such valuation may be altered.

II. *And be it further enacted*, That the assessors of each town or ward may distribute their towns or wards, by mutual agreement, into such number of divisions, to be

Assessors may distribute their towns into assessment districts

How to ascertain the value of personal estate.

called assessment districts, as they may deem convenient, not exceeding the number of assessors in such town or ward, and shall in every year between the first days of May and June, ascertain according to the best evidence in their power and set down in the said assessment roll the value of the personal estate of every person residing in such town or ward over and above all debts and demands against such person; and in case any person not satisfied with such estimate shall make affidavit before such assessors or either of them, who are hereby authorized to administer such oath, that the value of his or her personal estate does not exceed a certain sum, specifying the same, then and in every such case the assessors shall value such personal estate at the sum specified in such affidavit and no more; and every person liable to be taxed for any personal estate as aforesaid, shall be taxed for the same in the town or ward where such person shall reside at the time of making the said assessment.

Where to be taxed.

To vary the assessment of lands increased or diminished in value.

III. *And be it further enacted*, That whenever any lands shall be increased in value by the erection of dwelling houses or other buildings not included in the said valuation, and whenever any dwelling house or other building shall be destroyed or damaged by fire or other accident, the assessor within whose assessment district the same may be shall inquire into and ascertain the amount of such diminution or increase of value and vary the assessment roll accordingly.

Assessment rolls how to be formed and to whom delivered.

IV. *And be it further enacted*, That the said assessors shall set down in their assessment roll opposite the name of each person in one column, where such person does not reside in their town or ward, the word "*non-resident*," and shall specifically designate the real estate of such non-resident so assessed, to the end that one non-resident may not be assessed for the lands of another; in another column the value of the real estate, and in a third column the value of the personal property owned or possessed by him or her, leaving room sufficient opposite thereto to insert the sum to be paid as a tax thereon, and shall complete such assessment roll of real and personal estate and deliver the same, signed by them or the major part of them, on or before the first Tuesday of July in every year to the supervisor of their respective towns, except in the city and county of New-York, where the same shall be delivered to the clerk of the said city, who shall deliver the same to the board of supervisors at their next meeting, leaving a copy thereof with one of the assessors, and thereupon cause notices in writing to be fixed up at two or more public places in their ward or town, setting forth that they have completed such assessment and that a copy thereof is left with one of the assessors, naming him and the place of his residence, where the same may be seen

Copy to be left with one of the assessors for inspection

and examined by any of the inhabitants during ten days, and that at the expiration of the said ten days they will meet at a place in the said notice to be specified to review their said assessment on the application of any person conceiving himself aggrieved; and it shall be the duty of the said assessors during the said ten days to submit their assessment rolls to the inspection of any person who shall apply for that purpose, and at the said time and place the said assessors shall meet and on application of any person conceiving himself aggrieved, shall review the said assessment, and may alter the same on sufficient cause being shown to the satisfaction of the said assessors or a majority of them.

If cause shown to be altered by the assessors.

V. And be it further enacted, That the supervisors in each county shall annually on the first Tuesday of October meet together at the places established by law for their meeting, and shall estimate and set down or cause to be estimated and set down, in the column left for that purpose opposite to the several sums set down as the value of the real and personal estates in the assessment rolls the respective sums in dollars and cents, rejecting the fractions of a cent in all cases where they occur, to be paid as a tax thereon, and shall also add up and set down the aggregate value of the real and of the personal estates, and shall then cause two fair copies of each assessment roll to be made and subscribe their names or the names of a majority of them to the same, and shall transmit one of them to the comptroller of this state, stating thereon the sums directed to be levied for the support of the poor of such town, for the contingent charges of the county and for the state tax, and the date of their warrant to the collectors, and shall cause the other copy to be delivered to the collector of such town or ward with a warrant annexed to the same, under their hands and seals or the hands and seals of a majority of them, directed to and requiring him to collect from the several persons named in the assessment roll the several sums mentioned in the last column thereof, or in the last column of each page thereof if it consists of more than one page, opposite to their respective names, and authorising him, in case any of them shall refuse or neglect to pay such sum or sums, to levy the same by distress and sale of his or her goods and chattels, together with the costs and charges of such distress and sale, and directing him to pay such part of the money so collected, as shall have been directed to be raised for the support of the poor to the overseers of the poor of such town or ward, and the residue of the money to the treasurer of the county on or before the first day of February then next, retaining in his hands out of the same for his services five cents upon every dollar he shall collect or levy and pay to the overseers of the poor and

Supervisors when to meet and estimate the taxes to be levied.

Copies of the assessment rolls prescribed by them to be delivered to the comptroller and to the collectors with warrants to the latter.

Account thereof to be delivered to the treasurer of the county.

to the county treasurer ; and in case there shall be more than one collector in any such town or ward, then the said supervisors shall direct and cause such warrant and assessment roll to be delivered to such one of them as they shall judge most suitable and proper, and as soon as they shall have sent or delivered any assessment roll with such warrant as aforesaid to any collector they shall transmit an account thereof to the treasurer of the county, containing the name of the collector, the amount of the money he is to collect, distinguishing the sums that are to be collected for the support of the poor, for the contingent charges of the county and for the state tax, and the time when he is directed to pay the same to the county treasurer ; and the county treasurer upon receiving such account shall charge such collector with the amount of the money he is directed to collect, and the said supervisors shall proceed in the same manner with respect to the assessment rolls of every town and ward in their county until they shall have completed all such as shall have been delivered to them.

Who shall charge the collectors with the amount.

Penalty on any assessor for refusal or neglect of duty.

VI. *And be it further enacted,* That if any assessor shall refuse, or without being prevented by sickness, neglect to perform the duties required of him by this act, he shall forfeit and pay to the people of this state the sum of fifty dollars, to be recovered by action of debt or by information in any court of record with costs ; and in case of such neglect or refusal, or of any assessor being prevented from performing the said duties by sickness, the other assessors of each town or ward shall perform the same, and shall certify to the supervisors with their assessment roll the names of such delinquent assessors, distinguishing which of them, if any, were prevented from performing the said duties by sickness.

In case of sickness the others to act.

The clerks of the cities and towns annually to deliver to their supervisors the names of assessors and collectors.

VII. *And be it further enacted,* That the clerks of the respective cities of New-York, Albany, Hudson and Schenectady, and the town clerks of each town in this state, shall yearly between the first day of May and the first Tuesday of October, certify and deliver to the supervisor of their respective towns, who shall deliver the same to the board of supervisors at their next meeting, the names of all the assessors and collectors in their respective cities and towns ; and the supervisors shall at every of their meetings certify to the comptroller of this state the names and places of abode of the respective town clerks, and the names, additions and places of abode of all the assessors in their respective counties who shall have neglected, without having been prevented by sickness, to perform the duties required of them by this act, and the comptroller shall thereupon give notice thereof to the attorney general, and direct that such delinquent assessors be prosecuted for the penalties by them respectively incurred in pursuance of this act.

Supervisors to send the names of such clerks and of the delinquent assessors to the comptroller.

VIII. *And be it further enacted,* That any one or more of the assessors in any town or ward, in case of the absence or default of the other assessors, shall and may perform all the duties required of such assessors respectively by virtue of this act.

One or more assessors to act on default of the others.

IX. *And be it further enacted,* That the chamberlain of the city of New-York shall be considered as the treasurer of the county of New-York, and the city of Hudson shall be considered as a town in the county of Columbia for all the purposes contemplated by this act.

Chamberlain of the city of New-York to be the treasurer, and the city of Hudson deemed a town.

X. *And be it further enacted,* That every collector, upon receiving such assessment roll and warrant, shall proceed to collect the taxes therein mentioned; and shall pay the amount thereof, deducting five cents upon every dollar he shall have collected for his fees for collecting the same, to the overseers of the poor and to the county treasurer at the time for that purpose mentioned in the said warrant; and in case any person shall refuse or neglect to pay the sum or sums at which his or her estate shall be taxed as aforesaid, such collector is hereby authorized and required to levy the same by distress and sale of the goods and chattels of the person who ought to pay the same or of any goods or chattels in his or her possession wheresoever the same may be found within the district of such collector; and when any such distress shall be made of any goods or chattels in the possession of the person charged with such tax, no claim of any other person to the same by any right or title whatsoever shall be available; and in all cases of distress, if the goods and chattels distrained shall be sold for more than the amount of the tax with the charges of the distress and sale, the overplus shall be returned to the person in whose possession the same goods and chattels were when the distress was made.

Duty of the collectors.

XI. *And be it further enacted,* That the person in possession of any real estate at the time any tax is to be collected shall be liable to pay the tax imposed thereon, and in case any other person by agreement or otherwise ought to pay such tax or any part or proportion thereof the person who shall pay the same shall and may recover the amount from the person who ought to have paid the same; and all taxes upon any real estate shall be a lien thereon and shall be preferred in payment to all other charges, and all taxes upon any personal estate shall, in case of death or bankruptcy of the person taxed, be preferred in payment to all other demands.

Taxes on real estate to be paid by the possessors and to be a lien

On personal estate to be preferred before other demands.

XII. *And be it further enacted,* That every collector shall within one week after the expiration of the time mentioned in his warrant for paying the amount of the tax to the county treasurer, settle his account of the same tax with the county treasurer, and in case any of the taxes mentioned in the assessment roll annexed to his warrant or any

When the collector shall settle with the county treasurer.

How to discharge himself from sums which cannot be collected.

part of any of them shall remain unpaid, and he shall not have been able to levy the same, he shall deliver to the county treasurer an account of the names of the several persons charged with the same tax and the sums remaining due thereon from each of them respectively ; and if such collector shall make oath before the county treasurer, which oath the county treasurer is hereby authorized to administer, that the sums mentioned in such account remain due and unpaid and that he has not upon diligent inquiry been able to discover any goods or chattels belonging to or in the possession of either of the persons charged with or liable to pay the said respective sums whereon he could levy the same, then and in every such case the county treasurer shall credit the account of such collector with the amount thereof and shall within thirty days thereafter transmit to the comptroller of this state the said account and affidavit of such collector, which affidavit shall be written at the bottom or upon the back of the same account and be signed by such collector.

On default of any collector the county treasurer to issue a warrant to the sheriff against him for the deficiency.

Sheriff's duty

XIII. *And be it further enacted*, That if any collector shall refuse or neglect to pay to the county treasurer the amount of the taxes mentioned in any such assessment roll to be delivered to him as aforesaid, or to account for the same in manner aforesaid within the time limited as aforesaid, then the county treasurer shall within twenty days thereafter issue a warrant under his hand and seal, directed to the sheriff of the county, thereby commanding him to cause the same, or if any part thereof is paid or accounted for in manner aforesaid, then so much thereof as shall remain unpaid and not accounted for, to be made and levied of the goods and chattels, lands and tenements of such collector, and to return the money to him the said county treasurer within forty days after the date thereof together with the said warrant, and shall immediately deliver the same warrant to the sheriff of the county, and every sheriff to whom any such warrants shall be directed, shall immediately cause the same to be executed and shall make return thereof to the county treasurer within the time therein specified and pay to him the money levied by virtue thereof, deducting for his fees five cents upon every dollar of the sum levied and no more ; and if the whole sum is not levied, he shall indorse on the warrant the amount so levied exclusive of his fees, and that such collector has not any more lands or tenements, goods or chattels in his county whereon he could cause the residue of the money therein mentioned to be made or levied, and in case he cannot find any goods or chattels, land or tenements of such collector whereof he can cause any part of the sum mentioned in such warrant to be made or levied he shall make return thereof accordingly, and if no part of the money mentioned in such warrant or only a part of it shall be

levied, the county treasurer shall, upon the return of the warrant to him, transmit a copy thereof with a copy of the sheriff's return thereon indorsed to the comptroller of this state.

XIV. *And be it further enacted,* That if any sheriff shall neglect to return any such warrant or to pay the money levied thereon, within the times limited for the return thereof as aforesaid, or shall make any other return than such as is above mentioned, he shall be liable to pay to the people of this state to be recovered with costs of suit in an action for so much money received to their use, the whole sum directed to be levied by such warrant; and the county treasurer shall in every such case certify to the comptroller that he has issued such warrant, mentioning against whom and for what sum, and that the sheriff has neglected to return the same or to pay the money levied thereon; and the comptroller shall give notice thereof to the attorney general in order that such sheriff may be prosecuted for the amount due on such warrant, which upon recovery shall be paid to the treasurer of this state for the use of the state; and if any county treasurer shall neglect to issue such warrant as aforesaid against any delinquent collector in his county, or to transmit such account and certificate as aforesaid, such county treasurer shall be answerable in his account with the comptroller for the whole amount of the deficiency of such collector.

On default
the sheriff to
be liable.

How to be
prosecuted.

County trea-
surer how an-
swerable.

XV. *And be it further enacted,* That every county treasurer shall apply the first monies which shall come to his hand to the payment of the county charges certified to him by the supervisors as aforesaid, and shall pay the residue of the monies received by him into the treasury of this state on or before the first day of March in every year, retaining in his hands one cent upon every dollar received by him for his services; and it shall be lawful for any county treasurer to pay the money received by him into the bank of New-York or into the bank of Albany, to the credit of the treasurer of this state, such county treasurer immediately transmitting the cashier's receipts for the same to the comptroller who shall certify the same to the state treasurer and charge him with the amount.

Monies re-
ceived by the
county trea-
surer how to
be paid.

His fees.

XVI. *And be it further enacted,* That the comptroller shall in the month of March in every year, from the accounts and vouchers in his office, state the account of the county treasurer of each county in respect to the said taxes, charging him with the amount of the state taxes in his county and crediting him with the payments made by him to the treasurer of this state or into the bank of New-York, or into the bank of Albany, to the credit of the treasurer of this state, and with the amount of his fees and the collector's fees thereon, and with all such sums

Comptroller
to state the
accounts of
the county
treasurers.

And if a balance remain unpaid to order the same to be prosecuted;

And may direct suits against them and their sureties on their bond.

Provide.

Comptroller annually to transmit to the clerk of the supervisors in each county an account of the deficiencies of the personal tax to be levied anew;

And to publish deficiencies on real estates, &c.

as shall appear by the accounts, copies of warrants and returns transmitted to him as aforesaid not to have been collected or received, and shall transmit a copy thereof to him; and if any balance shall appear by any such account to be due from any county treasurer to the state, and such county treasurer does not pay such balance to the treasurer of this state or account for the same within thirty days thereafter, the comptroller shall deliver another copy of such account to the attorney general to be prosecuted against such county treasurer, and it shall be sufficient in the declaration in any such suit to set forth, that the defendant on the day such account was stated as aforesaid and at a certain place was indebted to the people of the state of New-York in the sum therein stated, as the balance for so much money before that time received by him to their use, and that he in consideration thereof promised to pay the same, and to give the special matter in evidence; and the said comptroller may also at his discretion, direct the supervisors of the county to which such county treasurer shall belong, to commence and prosecute one or more suits against such county treasurer and his sureties or either of them, or their representatives, on the bond given by them to the said supervisors for the faithful execution of the office of such county treasurer, and if any sum shall be recovered in any such suit, the defendant shall be liable to pay the costs of such suit; *Provided always,* That if the defendant shall at any time before judgment obtained in any such suit pay the said balance into the treasury of this state, or account for the same to the comptroller and pay the costs of suit, it shall be lawful for the comptroller thereupon to direct such suit to be discontinued.

XVII. *And be it further enacted,* That the comptroller shall on or before the third Tuesday in July in every year hereafter, from the accounts and vouchers in his office, transmit to the clerk of the supervisors in each county an account of the amount of the taxes on personal estate in the several towns or wards of such county in the preceding year, not paid or accounted for by the collectors of any town or ward in such county, nor levied as aforesaid of the lands and tenements, goods and chattels of such collector, and the supervisors shall add a just proportion of the sums so remaining unpaid to the tax of every person named in the next assessment roll of such town or ward, or where any such persons are not named in such assessment roll shall justly apportion the sums due from them to and amongst all the persons in such town or ward named on the said assessment roll; and if any of the taxes of the preceding year charged on real estate shall remain unpaid, the comptroller shall on or before the day above mentioned, cause notice thereof to be given in the new-

paper printed by the printer to the state and in two of the newspapers printed in the city of New-York, distinguishing the names of the several persons whose taxes are unpaid, the towns in which the real estates lie and the sums due from each person, and thereby requiring them within six months from the day above mentioned, to pay the same to the treasurer of this state, who shall, on the warrant of the comptroller, pay the expence of transmitting and publishing such notices out of any money in the treasury, and all such sums as shall be unpaid after the time limited by such notice, shall thereafter be subject to a yearly interest at the rate of fourteen per cent until the same shall be actually paid to the treasurer of this state, or the lands on which the same are a lien be sold as is herein after mentioned.

XVIII. *And be it further enacted,* That any tax to be laid in pursuance of this act upon real estate and the interest as aforesaid which may accrue thereon, shall be a lien upon the same real estate until the same tax and interest shall be paid or recovered, notwithstanding the same may have been divided or aliened in the whole or in part, and such lien shall be considered as a mortgage; and whenever such tax and the interest aforesaid accruing thereon shall remain unpaid for two years from the time limited in such notice as aforesaid, the comptroller shall cause so much of the lands charged with the said tax and interest to be sold at public vendue, at the city hall of the city of Albany to the highest bidder, as shall be necessary to pay the same together with the charges of such sale, giving one year's previous notice of such sale in the newspaper printed by the printer of this state and in two of the public newspapers printed in the city of New-York; and the comptroller shall on every such sale, give to the purchaser a certificate thereof; and if any person claiming title to the lands described in such certificate shall not within two years from the date thereof pay to the comptroller, for the use of the purchaser, his heirs or assigns, the amount of the taxes, interest and charges paid by him on such sale, together with the interest thereof, at the rate of twelve per cent per annum, from the date of the said certificate, the comptroller shall at the expiration of the said two years, execute to the purchaser, his heirs or assigns, in the name of the people of this state, a release for the lands so sold; *Provided always,* That no procedure for sale shall take place until the arrears of taxes due from any person in any county within this state, together with the interest accumulated thereon, shall exceed the sum of fifty dollars.

Taxes a lien on real estate and in what manner the same may be sold, &c.

XIX. *And be it further enacted,* That in any action or information for recovery of any penalty or forfeiture by virtue of this act, it shall be sufficient in the declaration

Penalties and forfeitures, how to be recovered and applied.

to set forth, that the defendant at a certain time and place became indebted to the people of the state of New-York in the sum to be recovered, specifying the same, as a forfeiture incurred for refusing or neglecting to perform the duty required of him by virtue of an act, entitled *An act for the assessment and collection of taxes*, to be paid to the people of the state of New-York when he should be thereunto required, and to give the special matter in evidence, and the amount of all such penalties when recovered shall be paid into the treasury of this state for the use of this state.

The provisions of this act to apply to past arrearages on real estates.

XX. *And be it further enacted*, That all the provisions herein before made relative to taxes on real estates remaining unpaid, shall apply to such taxes charged on real estates as shall appear by the returns of the respective collectors made in the present year to be in arrear.

If arrearages in any county exceed the state tax, treasurer to pay to the county treasurer the amount of the county charges.

XXI. *And be it further enacted*, That whenever the arrearages of taxes in any county have or shall in any year exceed the amount of the state tax, the treasurer of this state shall, out of the first monies that may be received on such arrearages, upon the warrant of the comptroller, pay to the treasurer of the said county the sum that may be due out of such arrearages on the tax directed to be levied for county charges.

How taxes may be paid to the treasurer.

XXII. *And be it further enacted*, That the comptroller shall from time to time give to any person requiring the same a certificate of the amount of any tax unpaid, whether charged upon real or personal estate, and it shall be lawful for the treasurer to receive and give a receipt for the same tax upon such certificate, which shall be carried to the comptroller who shall countersign the same and enter the payment in the accounts in his office, which shall be a sufficient discharge of such tax, and such tax shall not be included in any account to be sent to the supervisors or in any manner directed to be prosecuted.

Compensation to supervisors and assessors how paid, &c.

XXIII. *And be it further enacted*, That the compensation to the assessors and supervisors for executing the duties enjoined on them by this act, shall be allowed and paid in like manner as the county charges in this state are allowed and paid, and that each assessor shall be entitled to receive for his services one dollar and twenty-five cents per day.

What property exempted from taxation

XXIV. *And be it further enacted*, That no houses or lands belonging to the United States or to the people of this state, nor any church or place of public worship, nor any personal property belonging to any minister of the gospel or to any priest of any denomination whatsoever, nor any real estate of such minister or priest not exceeding in value one thousand five hundred dollars, nor any college or incorporated academy, nor any school house, court house, gaol, alms house, or property belonging to any incorporated library, shall be taxed by any law of this state.

XXV. *And be it further enacted,* That the lands, buildings, improvements, premises and appurtenances, called and known by the name of the Hamilton Manufacturing Society, and every thing appertaining in and to the carrying on the manufactory of glafs, together with the buildings of the workmen about the fame, shall be and bereby are exempted from taxation for and during the term of five years from and after the passing of this act.

Certain property exempted for a limited period.

XXVI. *And be it further enacted,* That this act shall not take effect until after the eighth day of November which will be in the year of our Lord one thousand eight hundred and two, as to laying, assessing or collecting any state tax upon or in respect to any part of a certain tract of two hundred and thirty thousand and four hundred acres of land, granted by the commonwealth of Massachusetts to Samuel Brown and others, on the eighth day of November, in the year of our Lord one thousand seven hundred and eighty-seven, nor until the twenty-first day of November, which will be in the year of our Lord one thousand eight hundred and three, as to laying, assessing or collecting any state tax upon or in respect to any lands in the counties of Ontario and Steuben, which were confirmed to Nathaniel Gorham and Oliver Phelps by the commonwealth of Massachusetts, on the twenty-first day of November, in the year of our Lord one thousand seven hundred and eighty-eight, nor as to laying, assessing or collecting any state tax upon or in respect to any other lands in the county of Ontario held under any grant from the commonwealth of Massachusetts, until after the eleventh day of May, which will be in the year of our Lord one thousand eight hundred and six.

Other property also exempted for limited periods.

XXVII. *And be it further enacted,* That all frauds and offences against this act, or in the execution thereof, other than such for which penalties are above imposed, shall be considered as misdemeanors, and all such offenders shall and may be prosecuted for the same by indictment or information in the supreme court or any court of oyer and terminer and gaol delivery or sessions of the peace.

Frauds and offences against this act indictable

XXVIII. *And be it further enacted,* That the mayor, recorder and aldermen of the city of New-York, shall in the city and county of New-York, perform all the duties enjoined by this act on the supervisors of the respective counties.

Mayor, &c. of New-York, to act as supervisors.

C H A P. CLXXX.

An ACT for defraying the public and necessary Charges in the respective Counties of this State.

Passed 8th April, 1801.

Supervisors of the several counties to meet annually

In Tioga county at Owego. In the other counties at the court house.

And audit accounts and determine the sums to be raised.

Supervisors to audit the expences of certain town officers,

And to apportion to each town its proportion of charges and expences.

How to be collected and applied.

I. *BE it enacted by the People of the State of New-York, represented in Senate and Assembly, That the supervisors of the several cities and towns in each of the counties of this state, other than the city and county of New-York, shall annually on the first Tuesday of October, meet together: In the county of Tioga at the village of Owego in the town of Tioga in said county, and in the other counties of this state at the court house in each county, and if there be no court house, then at the place where the last court of common pleas for such county shall or ought to have been held, and at such other times and places as they shall find convenient; in the county of Westchester however their next meeting shall be at the court house in Bedford, and after that time alternately at the court house in White Plains and Bedford; and examine, settle and allow all accounts chargeable against such county, and ascertain what sum ought to be raised for the payment thereof, and for defraying the public and contingent charges of such county.*

II. *And be it further enacted, That the compensation for the services of the assessors, inspectors of election and commissioners of highways, shall be considered as town expences, and it shall be lawful for the supervisors of the several counties in this state to audit the accounts of such town officers, and the said supervisors shall ascertain the amount of each town's proportion of the county costs according to the value of the real and personal estates therein, and as valued by the assessors in each town in the same year, and to such sum add such other sum as shall be found by the said supervisors necessary to defray such town expences, and such further sum as any such town shall have voted to be raised for the destruction of noxious animals, birds and weeds in the same year, with the sum to be raised in each town for maintenance of the poor thereof, and shall cause all such sums to be raised and levied, together with the taxes to be raised and levied for the use of this state, by adding to the tax of each person liable to pay the same, as the other contingent charges of the towns and counties are levied and collected, and shall in their warrants to the collectors of each respective town, direct such collector to pay the sum so raised and collected for town expences into the hands of the supervisor of the town for the payment of said town expences, who shall for such money account with the justices of the peace and town clerk on or before the last Monday of September thereafter in each year, and out of the*

first money which shall be collected such collector shall pay to the overseers of the poor such money as shall be so raised for the maintenance of the poor of such town; and the residue of the money so collected by him to be paid to the treasurer of the county on or before the first day of February then next.

III. *And be it further enacted*, That if any collector in any city, town or ward shall not pay to the supervisor and overseers of the poor thereof the monies directed to be paid to them by such warrant within the time therein mentioned, and produce to the county treasurer receipts for the same from one or more of the said overseers and supervisor, or satisfactory evidence of such payment, within one week after the expiration of the time mentioned in such warrant, the same shall be deemed to be unpaid, and it shall be the duty of such treasurer to collect the same together with the other monies, if any, which may be due from such collector for taxes, and to proceed in the same manner for the recovery thereof as is directed in such cases by the act, entitled *An act for the assessment and collection of taxes*, and out of the first monies received by him on such proceedings to pay the same to the said supervisor and overseers.

If collector be in default how the monies to be recovered.

IV. *And be it further enacted*, That the supervisors in each county shall as often as may be necessary appoint some proper person to be their clerk, and also some reputable freeholder of such county to be the treasurer of such county, which clerk and treasurer shall respectively hold their offices during the pleasure of the said supervisors; *Provided*, That the clerks and treasurers already so appointed shall continue to hold their offices during the pleasure of the said supervisors; and the said treasurer shall receive all the monies raised in such county for defraying the public and necessary charges thereof and for the use of this state, and shall pay all the monies received by him for such charges as the said supervisors shall by any written order for that purpose direct, and all monies received by him for the use of the state to the treasurer of this state within the time required by law, and such treasurer shall keep a just and true account of the receipts and payments of all monies which shall come to his hands as treasurer of such county, and enter the same in a book or books to be kept for that purpose, and once in every year, at the annual meeting of the said supervisors, or at such other time as they shall direct, shall exhibit to them all such books and accounts and all vouchers relating to the same, to be allowed and audited.

Supervisors to appoint a clerk and treasurer.

Proviso.

Duty of the Treasurer.

V. *And be it further enacted*, That the treasurer of every county before he enters upon the execution of his office, shall enter into a bond to the supervisors of such county, with sufficient sureties to be approved of by them, and

Treasurer to give bond with security for the execution of his office.

When forfeited how to be prosecuted.

Monies recovered how to be applied.

Treasurer to deliver books and papers to his successor upon oath.

Penalty for neglect or refusal.

in such sum as they shall direct, conditioned that he shall well and faithfully execute the office of treasurer in such county, and pay all monies which shall come to his hands as treasurer according to law, and render a just and true account thereof to the said supervisors, or to the comptroller of this state, when thereunto required, which shall be deposited in the clerk's office of the respective counties; and it shall be the duty of the said supervisors, in case the condition of such bond shall not be complied with, or if required by the comptroller of this state, to prosecute one or more actions of debt on such bond in any court of record, against the obligors of such bond or either of them, or the heirs, executors or administrators of all or any of the said obligors; and it shall also be lawful for the said supervisors to commence an action for money had and received, or an action of account against such treasurer, his executors or administrators, for all monies received by him as treasurer, other than for the use of this state; all which actions may be maintained in the name of the said supervisors generally, and shall not abate or be discontinued by the death or expiration of office of any of them, and all monies recovered in any such action shall be applied by the said supervisors to the payment of the contingent charges of such county, or if the same or any part thereof shall have been received by such treasurer for the use of this state and recovered on such bond at the instance of the comptroller, the same shall be paid by the said supervisors to the treasurer of this state.

VI. *And be it further enacted,* That upon the death, resignation or removal from office of any county treasurer, all the books and papers belonging to his office, upon the oath of the preceding treasurer, or in case of his death upon the oath of his executors or administrators shall be delivered to his successor in office; and if any such preceding treasurer or his executors or administrators shall refuse or neglect to deliver the same upon oath as aforesaid, being lawfully demanded, every such person shall forfeit and pay for every such refusal or neglect the sum of one thousand two hundred and fifty dollars, to be recovered with costs of suit for the use of the same county in the name of the supervisors of such county, by action of debt or by information in any court of record, and in every such action or information it shall be sufficient for the plaintiff to set forth, that the defendant on the day such demand was made became indebted to the supervisors of such county in the sum of one thousand two hundred and fifty dollars, as a forfeiture for refusing and neglecting to deliver up the books and papers belonging to the office of treasurer of such county, according to the form of this act, to be paid to the supervisors of the same county when he should be thereunto required, and to give the special matter in evidence.

VII. *And be it further enacted,* That a majority of the supervisors of any county shall constitute a legal and competent board to transact all business at any meeting of the said supervisors, and their doors shall be open to all citizens who may wish to attend such meeting; and all questions which shall arise at any such meeting shall be determined by the opinion of the majority of such supervisors attending the same.

What number of supervisors to make a board and their proceedings how conducted.

VIII. *And be it further enacted,* That all conveyances of any lands made or to be made to the supervisors of any county in this state for the use of such county shall be valid, and vest in the supervisors of such county and their successors in office the estate and interest intended by such conveyances, and for the uses therein expressed.

Conveyance of land to the supervisors valid.

IX. *And be it further enacted,* That the supervisors of each of the counties of this state shall be allowed as a compensation for their services and expences in attending their meetings in such county, the sum of two dollars per day and no more, and the clerk of the supervisors in each county shall be allowed for his services such sum as the supervisors of such county shall from time to time direct; which sums shall be raised and levied as part of the contingent charges of such county; and every county treasurer shall be entitled to retain for his services a commission at the rate of one cent for every dollar which he shall receive and pay, to wit, one half of such commission for receiving and the other half for paying.

Compensation of supervisors

And clerk

And treasurer

X. *And be it further enacted,* That if any supervisor shall neglect or refuse to perform any of the duties required of him by this act, he shall for every such offence forfeit to the people of this state the sum of two hundred and fifty dollars, to be recovered with costs in any court of record by action of debt or by information, and in every such action or information it shall be sufficient to set forth that the defendant at a certain time and place became indebted to the people of this state in the sum of two hundred and fifty dollars, as a forfeiture incurred for refusing and neglecting to perform the duties required of him by this act, to be paid to the said people when he should be thereto required, and to give the special matter in evidence; and in case of any such forfeiture, it shall be the duty of the attorney general when required by the comptroller, to cause the same to be prosecuted, and when recovered the same shall be paid into the treasury of this state.

Penalty on supervisors for neglect of duty.

How recovered & applied.

XI. *And be it further enacted,* That it shall be the duty of the supervisors of every county in this state, as often as shall be necessary, to cause the court house and gaol of their county to be duly repaired, and for that purpose they are hereby authorized and required from time to time to direct to be raised and levied on the freeholders

Supervisors to cause court houses and gaols to be repaired.

and inhabitants of their county sufficient sums of money for such repairs, as part of the contingent charges of such county, not exceeding the sum of five hundred dollars in any one year.

C H A P. CLXXXIII.

An ACT for the Limitation of Criminal Prosecutions and of Actions at Law.

Passed 8th April, 1801.

No suit to be brought by the people of this state for lands but within forty years after their title accrued.

I. **B**E it enacted by the People of the State of New-York, represented in Senate and Assembly, That the people of this state will not sue or implead any person, body politic or corporate, for or in respect to any lands, tenements or hereditaments, other than liberties or franchises, or the issues or profits thereof, by reason of any right or title of the said people to the same, which shall not have accrued within the space of forty years before any suit or other proceeding for the same be commenced, unless the said people or those under whom they claim, shall have received the rents and profits thereof, or of some part thereof, within the said space of forty years; and in every case where such title shall not have accrued within the time aforesaid, unless such rents and profits shall have been received as aforesaid, the person, body politic or corporate holding such lands, tenements or hereditaments, other than liberties or franchises, shall freely hold and enjoy the same against the said people, and also against all persons claiming by or under them, except such persons shall claim by virtue of any letters patent or grants from the said people made upon suggestion of concealment or wrongful detaining, or defective title, upon which a verdict, judgment or decree in some court of record in this state shall have been given for such lands, tenements or hereditaments in favour of the said people, or of such patentee or grantee, his or their heirs or assigns, within the said space of forty years before commencing any suit or other proceeding for the same.

No action for the recovery of lands, &c. shall be maintained by any other person, nor avowry made, but on a seisin within twenty-five years, failing to include, &c.

II. *And be it further enacted*, That no action for the recovery of any lands, tenements or hereditaments shall hereafter be maintained, nor any avowry or cognizance be made, unless on a seisin or possession of the hereditaments, either of the plaintiff or person making avowry or cognizance, or of the ancestor or predecessor of such plaintiff or person making avowry or cognizance, within twenty-five years next before such action brought or avowry or cognizance made; *Provided always*, That no part of the time during which the plaintiff or person making avowry or cognizance shall have been within the age of twenty-one years, insane, *some covert* or imprisoned, shall be

taken as a part of the said limitation of twenty-five years ; and if any such action be brought or avowry or cognizance made and such seisin or possession be not proved by the plaintiff in such action or person making such avowry or cognizance, such plaintiff and such person making such avowry or cognizance, and their heirs and successors respectively, shall for ever thereafter be barred from bringing such action or making such avowry or cognizance.

III. *And be it further enacted*, That all writs of *scire facias* upon fines of any manors, lands, tenements or hereditaments hereafter to be brought, shall be sued and taken within twenty years next after the title and cause of action first descended or fallen and not after ; and no person shall at any time hereafter make any entry into any manors, lands, tenements or hereditaments but within twenty years next after his right or title descended or accrued to the same, and in default thereof such person so not entering and his heirs shall thereafter be barred from making such entry ; *And further*, That no claim or entry of or upon any manors, lands, tenements or hereditaments shall be a sufficient entry or claim within the meaning of this act, unless an action shall be commenced thereupon within one year next after the making of such entry or claim, and prosecuted with effect ; *Provided*, That if any person entitled to any such writ of *scire facias*, or to make such entry, be at the time such right or title first descended or accrued within the age of twenty-one years, *feme covert*, insane or imprisoned, such person and his heirs, shall or may after the said twenty years be expired bring such action or make such entry as he or they might have done before the expiration of the said twenty years, so as such person within ten years after such disability removed, or the heir or heirs of such person within ten years after his death, sue forth such writ or make such entry, and at no time after ten years as aforesaid.

Writs of scire facias upon fines to be brought within twenty years.

No entry to be made into lands but within twenty years.

No entry or claim to be good unless suit brought within one year.

Proviso in favor of infants &c.

IV. *And be it further enacted*, That any disseisor dying seised of any lands, tenements or hereditaments, having no right or title therein, shall not be taken or deemed any such descent in the law as to toll or take away the entry of any person or his heirs, who at the time of such descent shall have lawful right of entry therein, unless such disseisor shall have had the peaceable possession of the lands, tenements or hereditaments whereof he shall so die seised for the space of five years next after the disseisin by him committed, without entry or continual claim by or of the person or persons having lawful title thereto.

The dying seised of a disseisor not to toll an entry unless such disseisor had peaceable possession for five years.

V. *And be it further enacted*, That all actions upon the case and of account, other than actions for slander and actions which concern the trade of merchandize between merchant and merchant, their factors or servants, and all

Limitation of personal actions.

actions of debt for arrearages of rent, or founded upon any contract without specialty, and all actions of trespass, detinue and replevin for goods or chattels, and actions of trespass *quare clausum fregit*, shall be commenced and sued within six years next after the cause of such actions accrued, and not after ; and all actions for assault, battery, wounding and imprisonment, or any of them, shall be commenced and sued within four years next after the cause of such actions accrued, and not after ; and all actions on the case for words within two years after the words spoken, and not after ; *Provided however*, That if in any of the said actions judgment shall be given for the plaintiff, and the same be reversed by error, or if a verdict pass for the plaintiff and upon matter alledged in arrest of judgment the judgment be given against the plaintiff that he take nothing by his plaint, writ or bill, or if any of the said actions shall be brought by original and the defendant therein be outlawed and shall after reverse the outlawry, in all such cases the party plaintiff, his heirs, executors or administrators, as the case shall require, may commence a new action from time to time within one year next after such judgment reversed, or such judgment given against the plaintiff, or outlawry reversed, and not after ; *And provided also*, That if any person entitled to any of the said actions, shall at the time of the cause of action accrued be within the age of twenty-one years, *feme covert*, insane or imprisoned, such person shall be at liberty to bring the said actions within the respective times above limited after such disability removed ; and if any person against whom any cause of any such action shall accrue, shall be out of this state at the time the same shall accrue, the person who shall be entitled to such action shall be at liberty to bring the same within the times respectively above limited after the return of the person so absent into this state.

Proviso that on reversal or arrest of judgment plaintiff may bring a new suit within one year.

Further proviso in favour of infants, &c.

Limitation of actions & informations on penal statutes.

VI. *And be it further enacted*, That all actions, informations and indictments which at any time hereafter shall be brought, sued or exhibited for any forfeiture upon any penal statute, made or to be made, whereby the forfeiture is or shall be limited to the people of this state only, shall be brought, sued or exhibited within two years next after the offence committed or to be committed against such penal act, and not after ; and that all actions or informations which shall at any time hereafter be brought, sued or exhibited for any forfeiture upon any penal statute, made or to be made, the benefit and suit whereof is or shall be by the said statute limited or given to any person who shall prosecute for the same, or to the people of this state and to any other who shall prosecute in that behalf, shall be brought, sued or exhibited by any person who may lawfully pursue for the same, within one year next after the offence committed or to be committed against the said

statute ; and in default of such pursuit that then the same shall be sued, brought or exhibited for the people of this state at any time within two years after that year ended ; and that all actions or informations which shall at any time hereafter be brought, sued or exhibited for any forfeiture or cause upon any statute, made or to be made, the benefit and suit whereof is or shall be given or limited to the party aggrieved, shall be brought, sued or exhibited within the space of three years next after the offence committed or to be committed, or cause of action accrued, and not after ; and if any action, information or indictment for any offence against any statute, made or to be made, shall be brought after the time in that behalf above limited, the same shall be void ; *Provided always*, That where any action, information, indictment or other suit is or shall be limited by any statute to be sued, brought or exhibited within a shorter time than is hereby limited, then the same shall be brought within the time limited by such statute.

Provido as to shorter limitations by other statutes.

VII. *And be it further enacted*, That all suits, informations and indictments which shall hereafter be brought or exhibited for any crime or misdemeanor, murder excepted, shall be brought or exhibited within three years next after the offence shall have been committed, and not after, and if brought or exhibited after the time hereby limited the same shall be void ; *Provided however*, That if the person, against whom such suit, information or indictment shall be brought or exhibited, shall not have been an inhabitant or usually resident within this state during the said three years, then the same shall or may be brought or exhibited against such person at any time within three years, during which he shall be an inhabitant or usually resident within this state, after the offence committed ; *And provided also*, That where any suit, information or indictment for any crime or misdemeanor is limited by any statute to be brought or exhibited within a shorter time than is hereby limited, then the same shall be brought or exhibited within the time limited by such statute.

Limitation of criminal prosecutions.

Provido as to non-resident offenders.

Further proviso as to shorter limitations by other statutes.

VIII. *And be it further enacted*, That no part of the time from the fourteenth day of October, in the year one thousand seven hundred and seventy-five, to the twenty-first day of March, one thousand seven hundred and eighty-three, shall be deemed or adjudged as part of the respective periods herein before limited for making any title, prescription, cognizance or claim, or bringing any action or suit whatsoever.

A certain period not to be computed as part of the periods of limitation.

An ACT for the Settlement and Relief of the Poor.

Passed 8th April, 1801.

Each town to
support its
poor.A settlement
how gained.Bastard chil-
dren where
settled.Purchase of
an estate of
less than 75
dollars value
not to gain a
settlement.Strangers to
give notice to
the overseers
within forty
days, and if
not removed
in one year
thereafter, to
gain a settle-
ment.

I. **B**E it enacted by the People of the State of New-York, represented in Senate and Assembly, That every city and town shall support and maintain their own poor.

II. *And be it further enacted*, That every person who shall have come to inhabit in any city or town within this state, and shall actually and *bona fide* have rented and occupied a tenement of the yearly value of thirty dollars or upwards for two years and actually paid such rent, or shall for himself or on his own account have executed any public annual office or charge in such city or town during one whole year, or who shall have been charged with and paid his or her share towards the public taxes of such city or town for the space of two years ; and every person who shall have been bound an apprentice or servant by indenture or by any deed, contract or writing not indented, and shall in consequence of such binding have served a term not less than two years in such city or town, shall be deemed and adjudged to have obtained a legal settlement in such city or town ; and that all mariners coming into this state and having no settlement in this state or in any other of the United States of America, and every other healthy able bodied person coming directly from some foreign port or place into this state, shall be deemed and adjudged to be legally settled in the city or town in which he or she shall have first resided for the space of one year.

III. *And be it further enacted*, That every bastard child shall be deemed and adjudged to be settled in the city or town of the last legal settlement of his or her mother.

IV. *And be it further enacted*, That no person shall be deemed to gain a settlement in any city or town within this state, by virtue of any purchase of any estate or interest in such city or town, whereof the consideration for such purchase shall not amount to the sum of seventy-five dollars, *bona fide* paid, for any longer or further time than such person shall inhabit in such estate, and shall thereafter be liable to be removed to the city or town where such person was last legally settled before the said purchase and inhabitancy therein.

V. *And be it further enacted*, That if any person, other than those herein before mentioned, coming into any city or town, shall within forty days after such person's coming into such city or town deliver a notice in writing to any two overseers of the poor of such city or town into which such person shall so come to reside, of the house or place of his abode, and the number and names of his family, if he shall have any, which notice such overseers of the

poor are hereby required to cause to be registered within forty-eight hours after receipt thereof in the book kept in such city or town for the accounts of the poor, and in case the overseers of the poor of such city or town shall not within twelve months after such notice cause such persons to be removed out of such city or town, in the manner herein after mentioned, then and in such case the person so giving notice as aforesaid shall be deemed and adjudged to be legally settled in such city or town.

VI. *And be it further enacted*, That if any overseer of the poor shall refuse or neglect to register or cause to be registered such notice in writing as aforesaid in such time and manner as aforesaid, he shall for every such refusal or neglect forfeit the sum of five dollars to the use of the party aggrieved, to be recovered with costs of suit in any court having cognizance thereof.

Overseers neglecting to register such notice to forfeit five dollars.

VII. *And be it further enacted*, That if any overseer of the poor of any city or town shall have reason to believe that any stranger who shall have come to reside in such city or town and who shall not have obtained a legal settlement therein, is likely to become chargeable to such city or town, such overseer shall apply to any two justices of the peace of such city, or of the county in which such town shall lie, and inform them thereof; and the said justices being so or otherwise informed or suspecting such stranger to be of insufficient ability or likely to become a charge to such city or town, are hereby authorized and required to issue their warrant to a constable of such city or town thereby commanding him to bring such stranger before them at such time and place as they in their said warrant shall for that purpose appoint; and the said justices shall examine every stranger so brought before them and any other person whom they may think necessary upon oath, relating to the abilities and last place of legal settlement of such stranger; and if upon such examination the said justices shall find such stranger likely to become a charge to such city or town, they shall order and direct such stranger by a certain day to remove to the place of his former settlement, and on neglect or refusal to comply with the said order, the said justices shall issue a warrant under their hands and seals, directed to any constable of such city or town, who is hereby required and commanded to execute such warrant, thereby commanding him to convey or transport such stranger to the constable of the next city or town through which such stranger shall have been suffered to wander unapprehended, and so from constable to constable, or in such other manner by the nearest and most convenient route as the said justices shall think fit to direct, to the place of legal settlement of such stranger, if the same shall be within this state; and if such stranger hath no place of

Overseers suspecting a stranger will become chargeable may apply to two justices of the peace.

Who are to cause such stranger to be before them and examined.

And may direct him to remove.

And on his neglect may remove him by warrant to his place of settlement or to the town whence he last came.

legal settlement within this state, or if the said justices shall not be able to discover where the last place of legal settlement of such stranger was, then the said justices shall in their said warrant direct that he be conveyed and transported to the city or town from whence he last came; and the constable so conveying such stranger shall deliver him together with his warrant aforesaid to or at the house of some constable of such city or town, which constable is hereby required to receive such stranger and convey him to the next constable, and so from constable to constable, or otherwise as such justices shall direct as aforesaid, until such stranger shall be transported out of this state into the state from whence he came.

Any householder entertaining a stranger for fifteen days without giving notice, to forfeit five dollars.

VIII. *And be it further enacted*, That if any inhabitant of this state shall receive or entertain in his dwelling house, out house or family, for the space of fifteen days, any person who hath not gained a settlement in some city or town within this state, and shall not within the time aforesaid give notice in writing to one of the overseers of the poor of such city or town of the name, quality, condition and circumstances of the person so entertained, according to the best knowledge of such inhabitant, every such inhabitant shall for every such offence forfeit the sum of five dollars, to be recovered with costs of suit before any court having cognizance thereof by any person who shall sue for the same; one half of which forfeiture when recovered, to be paid to the overseers of the poor of such city or town, and the other half to the person who shall sue for the same as aforesaid; *And further*, If the person so entertained as aforesaid shall have remained in any city or town longer than the term of forty days, then it shall be lawful for any two justices of the peace of such city or of the county in which such town shall be, to cause such of the inhabitants of such city or town who shall have so entertained such stranger during the term of fifteen days, without giving information thereof as aforesaid, to be brought before them, and such inhabitants shall enter into bond to the overseers of the poor of such city or town and their successors in the sum of two hundred and fifty dollars, conditioned that such stranger shall not become a charge to such city or town; and in case any of the said persons who shall have entertained such stranger as aforesaid, being in the opinion of such justices of the peace of sufficient ability, shall refuse to become bound as aforesaid, it shall be lawful for the said justices of the peace by warrant under their hands and seals, directed to any constable of such city or town, to cause such person to be committed to the common gaol of such city or of the county in which such town shall lie, there to remain until such person shall consent and become bound as aforesaid; but if the person so entertaining such stranger shall

And if such stranger continues above forty days, such householder to give bond to indemnify the town.

And on his refusal to be committed to gaol.

not in the opinion of the said justices be of sufficient ability to become bound as aforesaid, or if the said justices shall not think fit to take such bond, then they shall cause such stranger to be conveyed from constable to constable in manner aforesaid until he shall be transported to the place of his or her last settlement, if within this state, or into any other of the United States, if from thence such stranger came.

If justices do not think proper to take such bond, they shall cause such stranger to be removed.

IX. *And be it further enacted*, That every constable transporting any stranger shall receive so much money for his services as the supervisors of the city or county shall judge he reasonably deserved to have ; *And further*, That the charges of every transportation shall be borne by such city or county and be raised, collected and paid in the same manner as other monies for the contingent charges of such city or county.

Constable's allowance for removing strangers.

X. *And be it further enacted*, That if any person so removed or transported as aforesaid, shall return to this state or from the place of his legal settlement to the city or town from whence he was so removed or transported, so as to be likely to become a burthen to such city or town, such person so returning shall by warrant from any two justices of the peace of such city or of such county in which such town shall lie, be apprehended and re-transported as aforesaid, and shall by every constable into whose charge such person shall come, if the justices so removing him shall think proper and so direct, be whipped, if a man not exceeding thirty-nine lashes, and if a woman not exceeding twenty-five lashes, and so as often as such person shall return after such transportation.

Persons removed and returning, to be re-transported and whipped.

XI. *And be it further enacted*, That if any person be removed by virtue of this act from one city or town to another within this state, the overseers of the poor of the city or town to which the said person shall be so removed, are hereby required to receive the said person, and if they or any of them shall refuse or neglect so to do, the overseer so refusing or neglecting shall if thereof convicted by the oath of two witnesses, forfeit and pay for each offence the sum of twenty-five dollars, to the use of the poor of the city or town from which the said person was so removed, to be recovered with costs of suit in any court having cognizance thereof, by the overseers of the poor of such city or town from which such person was so removed ; *Provided always*, That no person nor any child belonging to such person, shall gain a settlement in the city or town to which he or they shall be so removed, but his or their settlement shall remain as before such removal.

Overseers of one town refusing to receive a person sent by warrant from another, to forfeit twenty-five dollars

No settlement gained by any such removal.

XII. *And be it further enacted*, That if any person who shall think proper to remove out of any city or town within this state into any other, there to inhabit or reside, and

Poor persons may remove to any town on producing

a certificate from their own town acknowledging them inhabitants.

shall at the same time procure and deliver to the overseers of the poor of the city or town where such person shall so come to inhabit or reside or to any one of them, a certificate under the hands and seals of the overseers of the poor or of any two of them, of the city or town of such person's last legal settlement, attested by two or more credible witnesses, thereby owning or acknowledging the person mentioned in such certificate to be an inhabitant legally settled in the city or town mentioned in such certificate, which certificate shall be either acknowledged by the overseers of the poor giving the same or shall be duly proved by the witnesses who shall have attested the execution thereof or one of them, before any justice of the peace of the city, or of the county wherein the town from whence any such certificate shall come shall be, and shall be approved of and subscribed by such justice of the peace, then it shall be lawful for every such person with his family, if any, upon the delivery of such certificate as aforesaid to remain in any such city or town to which such person shall remove as aforesaid, and to follow any employment within the same ; and the overseers of the poor shall deliver every such certificate to the town clerk of the city or town in which any such person shall come to reside as aforesaid, who is hereby required to file and record the same ; *And further*, That every such certificate so acknowledged or proved and allowed as aforesaid, shall be deemed in all courts whatsoever within this state as duly proved, and shall be taken and received as evidence without any other proof thereof.

Such certificate to be proved and filed and received as evidence.

Any such person becoming chargeable to be sent back to the town from which he procured the certificate

XIII. *And be it further enacted*, That whenever any person with his family, if any, or any part thereof so remaining by virtue of the certificate aforesaid, shall become chargeable or be obliged by sickness or otherwise to ask relief of the city or town into which such person was received as aforesaid, then and not before it shall be lawful for any two justices of the peace of the city or county into which such person was received by virtue of such certificate, to remove and convey every such person with his family and children, though born in such city or town, and servants and apprentices not having otherwise acquired a legal settlement there, to the city or town from which such certificate was brought as aforesaid, the overseers of the poor of which city or town are in such case hereby required and obliged to receive and provide for every such person and his family as aforesaid.

No certificate given to gain a settlement but by purchasing a freehold, renting a tenement or executing an office.

XIV. *And be it further enacted*, That no person who shall come to reside in any city or town by virtue of any such certificate, shall be deemed or adjudged by any act whatsoever of such person to have gained a legal settlement in such city or town during the time such person shall reside there by virtue of such certificate, unless such

person shall *bona fide* purchase a freehold of the value of seventy-five dollars or upwards, or *bona fide* have rented and occupied a tenement of the yearly value of thirty dollars or upwards for two whole years, or shall have executed a public annual office or charge in such city or town for one whole year as aforesaid.

XV. *And be it further enacted*, That when any person or his family residing in any city or town or sent thither by certificate and becoming chargeable as aforesaid, shall be removed back to the city or town to which such person shall belong, the overseers of the poor shall be reimbursed such reasonable charges as he or they may have been put unto in maintaining and removing such person by the overseers of the poor of the city or town to which such person is or shall be removed, the said charges having been first ascertained and allowed by two or more of the justices of the peace of the city or of the county in which such town from which such removal shall be made shall be ; which said charges so ascertained and allowed, shall in case of refusal of payment be levied by distress and sale of the goods and chattels of the overseers of the poor of the city or town to which such certificated person shall be removed as aforesaid, by warrant under the hands and seals of any two justices of the peace of the city or county where the overseers of the poor shall reside, who are hereby authorized and required to issue the same, directed to some constable of such city or town, returning the overplus, if any there be, after deducting all lawful costs and charges of such sale.

Certificated persons being sent back, overseers of the poor to be reimbursed their charges.

Charges how ascertained

And recovered.

XVI. *And be it further enacted*, That if any poor person shall remove or come, out of any city or town where he is or shall be legally settled, into any other city or town within this state, and shall be taken sick or lame so that such person cannot be conveniently removed back to the place of his last legal settlement, then the overseers of the poor of such city or town into which such poor person shall come as aforesaid, or one of them, shall give notice in writing to the overseers of the poor of the city or town out of which such poor person shall have come as aforesaid, of the name, condition and circumstances of such poor person, and request such overseers of the poor, or one of them, to take care of, relieve and maintain such sick or lame person during his illness, and also to provide for his funeral, if he should die there ; and if any such overseer of the poor having notice as aforesaid shall neglect or refuse so to do, then it shall be lawful for any two justices of the peace of the city, or of the county in which such town shall be where such poor person had his last legal place of settlement, upon complaint made to them, to cause all such sums of money as shall be necessarily expended in the maintenance of such poor person

If any poor person be unable to be sent back by sickness overseers of the poor of his own town to provide, upon notice given, for his support.

On refusal how the charges thereof to be levied

in his sickness or lameness, or on his funeral, to be levied by distress and sale of the goods and chattels of the said overseer of the poor so neglecting or refusing to take care of and provide for such poor person as aforesaid, after such notice given to him or them as aforesaid by warrant under the hands and seals of such justices, who are hereby authorized and required to issue the same, directed to some constable of the city or town where such overseer of the poor shall reside, returning the overplus, if any there be, after deducting all lawful costs and charges of such sale as aforesaid; and such sums of money so recovered shall be paid to the overseers of the poor, or to one of them, of such city or town where such poor person shall be sick, lame or die as aforesaid.

Persons aggrieved by order of the justices may appeal to the sessions.

XVII. *And be it further enacted*, That every person who shall think himself aggrieved by any judgment or order of any justice or justices of the peace, or by warrant of removal of any poor person, may appeal to the next general sessions of the peace to be holden in and for such city, or in and for the county in which such city or town shall be, where such judgment or order shall be made or from which such person shall be removed as aforesaid, who are hereby authorized and required to hear and determine such appeals and to do justice therein according to the merits of the respective cases; *And further*, That no justice of the peace who shall reside in any city or town where any dispute shall happen, except in the city and county of New-York, shall sit in court upon such appeal.

Justices determining such appeal in New-York to state the case specially.

XVIII. *And be it further enacted*, That on every appeal to be made to the court of general sessions of the peace to be holden in and for the city and county of New-York, the justices who shall determine such appeal shall upon request state the case specially and at large, that every person who shall think himself aggrieved by the determination on such appeal may have remedy thereupon in the supreme court.

No appeal without notice to the party affected thereby.

XIX. *And be it further enacted*, That no appeal from any judgment or order whatsoever of any justice or justices of the peace, or from any order of removal of any poor person whatsoever from one city or town to another, shall be proceeded upon in any court of general sessions of the peace, unless reasonable notice in writing be given by the overseers of the poor of the city or town or the person who shall make such appeal unto the overseers of the poor, or one of them, of such city or town as shall be affected by such judgment or order, or from which such poor person shall be removed, the reasonableness of which notice to be determined by the justices of such general sessions of the peace to which the appeal is made; and if it shall appear to them that reasonable notice was not

given, then they shall adjourn such appeal to the next general sessions of the peace and then and there finally hear and determine the same.

XX. *And be it further enacted*, That if the justices shall at their general sessions of the peace, to be holden in and for any city or county within this state, upon any appeal before them concerning the settlement of any poor person, determine in favour of the appellant, that such poor person was unduly removed, then the said justices shall at the same general sessions award to such appellant so much money, besides his costs and charges, as shall appear to the said justices to have been reasonably paid and expended by the overseers of the poor of the city or town on whose behalf such appeal was made, for or towards the relief of such poor person, between the time of such undue removal and the determination of such appeal; *And further*, That upon every appeal upon any judgment or order of any justice or justices concerning the settlement of any poor person, or upon any proof of notice of any such appeal to have been given by the overseers of the poor of one city or town, or by any other person, to the overseers of the poor of any other city or town, or to any other person, though such person did not afterwards prosecute such appeal, the justices at the same general sessions of the peace shall award to the party in whose favour such appeal shall be determined or to whom such notice did appear to have been given as aforesaid, such costs and charges as by the said justices in their discretion shall be thought reasonable, to be paid by the overseers of the poor of the city or town or other person against whom such appeal shall be determined, or who gave notice of such appeal as aforesaid and did not prosecute the same; *And further*, If in any of the cases aforesaid the person ordered to pay such monies and costs and charges shall reside in any city or county out of the jurisdiction of such court of general sessions of the peace, it shall be lawful for the overseers of the poor to whom such monies were directed to be paid, to sue for and recover the same of the person against whom such award was made, with costs of suit in an action for monies had and received to the plaintiff's use in any court in this state having cognizance thereof, in which action a true copy of the award of such justices in their court of general sessions of the peace, signed by the clerk and sealed with the seal of the same court when produced shall be sufficient evidence for the recovery of such monies so awarded.

The sessions, if they decide in favour of appellant, may award the money expended for the pauper.

And reasonable costs to the prevailing party.

How such money, costs and charges may be recovered where the party who is to pay resides out of the jurisdiction of the court.

XXI. *And be it further enacted*, That the father and grandfather, mother and grandmother, being of sufficient ability, of any poor, blind, lame or decrepid person whomsoever, not being able to maintain himself, and becoming chargeable to any city or town within this state,

Parents and children of poor persons when & how compellable maintain them.

and the children and grand children, being of sufficient ability, of every poor, old, blind, lame or impotent person, not being able to maintain himself and becoming chargeable as aforesaid, shall respectively at their own charge and expence relieve and maintain every such poor person in such manner as the justices of the peace of the city or county where such sufficient person shall dwell at their general sessions of the peace shall order and direct, on pain of forfeiting and paying one dollar and twenty-five cents for each person so ordered to be relieved for every week such order shall not be obeyed, to be sued for and recovered with costs of suit by the overseers of the poor of the city or town to which such poor person shall be chargeable, for the use of the poor of such city or town, in the manner herein before directed with respect to costs and charges upon an appeal.

If any person runs away and leaves a wife or child chargeable, the justices may seize his goods and let out his lands for the support of such wife or child.

XXII. *And be it further enacted*, That it shall be lawful for the overseers of the poor of any city or town within this state, where any father or husband shall run away or absent himself from his wife or children, or where any widow shall run away or absent herself from her child or children and leave any of them a charge to such city or town, to apply to any two justices of the peace of the city or county where any estate, real or personal, of any such father, husband or widow or any part thereof may be, and by warrant under the hands and seals of the said two justices, who are hereby authorised and required to issue the same, to take and seize the goods and chattels, and to let out and receive the annual rents and profits of the lands and tenements of such father, husband or mother so absconding as aforesaid, for and towards the maintaining, bringing up and providing for such wife, child or children so left as aforesaid; and as soon as the said seizure shall be allowed of and confirmed by the justices in their general sessions of the peace, it shall be lawful for the said overseers of the poor, or any two of them, as often as the case may require, to sell and dispose of so much of the said goods and chattels at public vendue to the highest bidder, and to receive the said rents and profits or so much thereof as shall be ordered by the said sessions, and to apply the money arising therefrom towards the maintenance of such poor family or person so left as aforesaid; *And further*, That the said overseers of the poor shall be accountable to the justices of the peace in their said general sessions for all such monies as shall arise from any such sale, and from the rents and profits of such lands and tenements.

When such seizure is confirmed by the sessions, overseers to sell the goods and receive the rents.

And be accountable to the sessions.

Inhabitants of each town to agree on the sum to be raised for the support of the poor.

XXIII. *And be it further enacted*, That the majority of the freeholders and inhabitants who shall be assembled at the annual town meetings in each town in this state, shall determine and agree upon such sum of money as they may think proper for the purpose of maintaining the poor

in such town in the ensuing year, of which each town clerk shall make full and proper entries in the town book by him to be kept, and shall as soon as conveniently may be deliver a true copy of such entry certified under his hand to the supervisor of said town, and the said supervisor is hereby required to lay the same before the supervisors of the county at their then next meeting, in order that the said sum may be raised in such town for the support and maintenance of the poor thereof.

To be laid before the supervisors.

XXIV. *And be it further enacted*, That that it shall be lawful for the mayor, aldermen and commonalty of the cities of Albany and Hudson respectively, in common council convened, yearly to determine and agree upon such sum of money as they may respectively think proper for the purpose of maintaining and supporting the poor in the said cities respectively in the ensuing year, of which sums the town clerk shall make a like entry as aforesaid in the minutes of the said common council, and deliver a certified copy as aforesaid to the supervisor of such city, who is hereby required to lay the same before the supervisors of the county at their next meeting for the purpose aforesaid.

Common councils in Albany and Hudson to determine the sums to be raised for the support of the poor.

XXV. *And be it further enacted*, That when any poor person belonging to any city or town within this state, shall apply for relief to any overseer of the poor of such city or town, the said overseer of the poor shall make application to a justice of the peace of such city, or of the county in which such town shall be, which said justice and overseer of the poor shall inquire into the state and circumstances of the person so applying as aforesaid; and if it shall appear to the said justice and overseer of the poor that such person is in such indigent circumstances as to require relief, then the said justice shall give an order in writing to the said overseer of the poor, to make such allowance weekly or otherwise to every such poor person as they in their discretion shall think the necessities of such poor person shall require; and the overseers of the poor shall make no other or further allowance to such poor person than what by the said order shall be directed, which said order shall be a sufficient voucher for the payment of so much money by the said overseers of the poor, and shall be allowed in adjusting their accounts.

Duty of overseers when any poor person applies for relief.

XXVI. *And be it further enacted*, That the overseers of the poor of each city or town within this state shall procure, at the public charge, a book wherein the names of all poor persons applying for relief and being ordered to be relieved as aforesaid shall be registered, with the day and year when they were first admitted to have relief, the weekly or other sum or sums of money allowed by the order for their relief and the cause of such necessity; and that no person shall be entered in the poor books or receive relief from the overseers of the poor or any of them,

Names of poor persons and their allowance to be registered in a book.

Overseers making any allowance without order, to lose the same.

Overseers to enter in such book all matters relating to their office.

Overseers of Albany and Hudson annually to lay their accounts before the common council.

Overseers of towns to lay the same before the town clerk, supervisors and justices.

Overseers with consent of their towns to build, purchase or hire houses for the poor.

And to purchase materials & employ the poor therein.

Persons refusing to be kept to work in such houses not entitled to relief.

without such order ; and in case any overseer of the poor shall enter in the poor books and relieve any poor person without such order, he shall forfeit and lose all such money and goods paid and distributed to such poor person, nor shall any allowance be made to him for the same in passing his account ; and the said overseers of the poor are hereby directed and required to enter in the said poor books all monies received, laid out and disbursed by them for the use of the poor, and also all matters which shall be transacted by them relating to their said office ; and the overseers of the poor for the cities of Albany and Hudson, shall yearly lay such books of account before the common councils of the said cities respectively, at such times as the said respective common councils shall direct ; and the overseers of the poor of every town shall yearly on the last Tuesday in March, lay their said books of account before the town clerk and supervisor of such town and such justice or justices of the peace as may reside in such town, or the major part of them, for their examination, who shall examine and audit the same, and make report thereof to the freeholders and inhabitants of their respective towns at their next annual town meeting, that such further provision for the maintenance and support of the poor may be made as may be found necessary.

XXVII. *And be it further enacted,* That it shall be lawful for the overseers of the poor of the cities of Albany and Hudson, by and with the consent of the common council of the same cities respectively, and for the overseers of the poor of any town within this state and any two or more justices of the peace of the county in which such town shall be, with the consent of the major part of the freeholders and inhabitants of such town, to be signified at such annual town meeting, and at the proper charge of such city or town, to be ascertained, assessed and levied as aforesaid, to build, purchase or hire some fit and convenient dwelling house or houses in such city or town, for the lodging and accommodation of the poor thereof ; and also to purchase necessary materials for setting such poor persons to work, and there to maintain and employ every such poor person, and to take the benefit of the labour and services of any such poor person for the better maintenance and relief of such poor persons who shall be there kept and maintained, and to appoint such keepers thereof from time to time as they shall think proper ; and in case any poor person claiming relief of any city or town within this state, where such house or houses shall be so built, purchased or hired, shall refuse to be lodged, kept to work and maintained therein, such poor person shall be put out of the book in which the names of the poor are by this act directed to be registered, and shall not be entitled to receive any relief from the overseers of the poor of any such city or

town ; *And further*, That where any town may be too small to build, purchase or hire such house or houses, it shall be lawful for the overseers of the poor and justices of the peace, with the consent of the major part of the freeholders and inhabitants of two or more towns within any county in this state, to be signified at their annual town meetings, to unite in building, purchasing or hiring such house or houses for the keeping and maintaining of the poor of such towns, and also to purchase necessary materials for setting such poor persons to work, and there to maintain and employ every such poor person, and to take the benefit of the labour and services of such poor person for the better maintenance and relief of the poor therein, and to appoint such keepers thereof from time to time as they shall think proper ; and in case any poor person, claiming relief of any of the towns so uniting, shall refuse to be lodged, kept to work and maintained as aforesaid, such poor person shall be put out of the book in which the names of the poor are by this act directed to be registered, and shall not be entitled to receive any relief from the overseers of the poor of any such town ; *And further*, That it shall be lawful for the overseers of the poor and justices of any town within this state, with the consent of the major part of the freeholders and inhabitants of such town where such house or houses shall be built, purchased or hired for the purposes aforesaid, to be signified at such annual town meeting, to contract with the overseers of the poor and justices of any other town for the lodging, maintaining and employing of any poor person belonging to such other town, as to them shall seem meet ; and in case any such poor person belonging to any other town shall refuse to be lodged, maintained and employed in any house so contracted for as aforesaid, such poor person shall be put out of the book in which the names of the poor are by this act directed to be registered as aforesaid, and shall not be entitled to ask or receive any relief from the overseers of the poor of any such town.

Any two towns may join together for the above purposes.

Overseers of the town where such house is provided may contract with the overseers of any other town for maintaining their poor.

No poor person refusing to be so maintained entitled to relief.

XXVIII. *And be it further enacted*, That the overseers of the poor of each city and town in this state, shall annually, within fifteen days after the termination of their respective offices, exhibit to the succeeding overseers of the poor of such city or town a just and true account of all the monies by them respectively received and expended for the use of the poor, and in what manner, together with an account of the earnings of the poor persons by them employed ; which accounts the said overseers of the poor together with the supervisor of such city or town and justices of the peace residing in such city or town, or the major part of them, shall as soon as conveniently may be, examine and audit ; and the said overseers of the poor so going out of office shall respectively on auditing such ac-

Overseers yearly to deliver account of monies received and expended to their successors, and to have their accounts audited.

And pay the balance to

Overseers making any allowance without order, to lose the same.

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XXVIII. *And be it further enacted*, That the overseers of the poor of each city and town in this state, shall annually, within fifteen days after the termination of their respective offices, exhibit to the succeeding overseers of the poor of such city or town a just and true account of all the monies by them respectively received and expended for the use of the poor, and in what manner, together with an account of the earnings of the poor persons by them employed ; which accounts the said overseers of the poor together with the supervisor of such city or town and justices of the peace residing in such city or town, or the major part of them, shall as soon as conveniently may be, examine and audit ; and the said overseers of the poor so going out of office shall respectively on auditing such ac-

Overseers yearly to deliver account of monies received and expended to their successors, and to have their accounts audited.

And pay the balance to

their successors.
And deliver
over their
books and pa-
pers.

Penalty for
neglect or re-
fusal.

If a balance
be due to the
overseers
going out of
office, the
successors to
pay it.

Overseers to
recover from
their prede-
cessors monies
due.

Masters of
vessels enter-
ed at New-
York to re-
port all pas-
sengers.

Under a pen-
alty.

count, pay all the balance which shall appear to be in their hands to their successors in office; and the overseers of the poor so going out of office, shall at the time of exhibiting their accounts deliver to their successors in office all books of accounts, registers and other papers relating to the poor as aforesaid; and if any overseer of the poor shall refuse or neglect to exhibit such account and to pay to his successors in office such monies as shall remain in his hands as aforesaid, or to deliver up all such books of accounts, registers and other papers as aforesaid, he shall forfeit and pay the sum of two hundred and fifty dollars, over and above the said balance remaining in his hands, to be recovered with costs of suit in any court of record within this state by the overseers of the poor of such city or town, and when recovered to be applied to the use of the poor of such city or town; and if upon auditing such account there shall appear to be a balance due to such overseers of the poor so going out of office, or to either of them, the same shall be paid to him or them by their successors in office out of the first monies which shall come into their hands as overseers of the poor of such city or town.

XXIX. *And be it further enacted,* That it shall be lawful for the overseers of the poor of each city and town to recover against their predecessors in office and each of them, their executors or administrators, all such sums of money as shall appear upon such audit as aforesaid to be due from them respectively to such city or town, in an action for money had and received, to the use of such city or town, with costs of suit in any court having cognizance thereof, or to have actions of account against any former overseer of the poor of such city or town, his executors or administrators; and no such action shall be abated or discontinued by the death or expiration of the office of any such plaintiffs, but shall be continued and prosecuted to effect by the survivor or survivors of them and their successors in office, and such suit shall always be brought and prosecuted by and in the name of the overseers of the poor of such city or town for the time being.

XXX. *And be it further enacted,* That every master of any ship or other vessel arriving from a foreign country or from any other of the United States, who shall enter his vessel at the custom house in the city of New-York, shall within twenty-four hours after such entry make a report in writing on oath to the mayor, or in case of his sickness or absence to the recorder of the said city, of the name, age and occupation of every person who shall have been brought as a passenger in such ship or vessel on her last voyage, upon pain of forfeiting for every neglect or omission to make such report the sum of seventy-five dollars for every alien and the sum of fifty dollars for every other person neglected to be so reported as aforesaid.

XXXI. *And be it further enacted,* That it shall be lawful for the said mayor, or in case of his sickness or absence, for the said recorder to require every such master of such ship or vessel to be bound with two sufficient sureties to the mayor, aldermen and commonalty of the said city, in such sum as the said mayor or recorder may think proper, not exceeding three hundred dollars for each passenger, to indemnify and save harmless the said mayor, aldermen and commonalty, and the overseers of the poor of the said city and their successors from all and every expence and charge which shall or may be incurred for the maintenance and support of any such person so imported, in case such person shall at any time within two years thereafter become chargeable to the said city; and if any such person so brought as aforesaid and not being a citizen of the United States, shall be permitted or suffered to land within the said city from any such ship or vessel before such bond shall have been given, and without a permission in writing from the said mayor or recorder, the master or commander of such ship or vessel shall be subject to the penalty of five hundred dollars for every person so suffered or permitted to land as aforesaid.

The mayor or recorder of New-York may require of every such master a bond of indemnity.

Penalty on suffering passengers being aliens to land within the said city without giving such bond.

XXXII. *And be it further enacted,* That if any person who may have been a passenger in any such ship or vessel and not being a citizen of the United States, shall be suffered to land from such ship or vessel at any place within the distance of fifty miles from the said city, with intent to proceed to the said city otherwise than in the said ship or vessel, the master or commander thereof shall be liable to the like penalty of five hundred dollars for every such person so suffered or permitted to land.

Or to land within fifty miles of New-York.

XXXIII. *And be it further enacted,* That if any householder in the said city shall knowingly entertain in his house or family any alien so landed as aforesaid, and shall not report such alien to the said mayor, or in case of his absence or sickness to the said recorder, within twenty-four hours after such entertainment commenced, he shall forfeit and pay the sum of fifty dollars for every such alien so entertained.

Penalty on householders entertaining such aliens and not reporting them.

XXXIV. *And be it further enacted,* That all and singular the said penalties and forfeitures arising in the said city, shall and may be sued for and recovered with full costs of suit, by action of debt, in the supreme court of this state, in the name of the said mayor, aldermen and commonalty, and when recovered by them shall be applied towards the support of the poor of the said city; and the defendant in every such suit shall be held to special bail, and the said supreme court shall direct the trial thereof by a jury of any county that may be judged proper; and upon every such trial for any penalty or forfeiture supposed to be incurred by the landing of any

Penalties how prosecuted, recovered and applied.

such person as aforesaid within the said city, the same landing shall be presumed, unless the defendant shall prove, that the said person was taken or sent to some foreign country without having been suffered to land as aforesaid.

Common council may compound for such penalties.

XXXV. *And be it further enacted,* That it shall be lawful for the said mayor, aldermen and commonalty to compound for the said penalties and forfeitures or any of them, either before or after suing for the same, upon such terms as the circumstances of the defendant or of the case may in their judgment require.

The vessel from which any alien shall be landed without permit, liable for such penalty unless the owner give bond with surety to pay the same.

XXXVI. *And be it further enacted,* That every ship or vessel from which such alien shall have been so landed without permission from the said mayor or recorder in writing, shall be liable for the said penalties and may be proceeded against by information in the said supreme court and by attachment and seizure grounded thereon, unless the owners thereof shall give bond with sufficient sureties to the sheriff serving such attachment for the payment of the said penalties and every of them, which may have been incurred during or since the last voyage of the said ship or vessel, or for paying the value of such ship or vessel, towards the satisfaction of such penalties as may have been so incurred by suffering any alien to land as aforesaid; and such value shall be ascertained by the wardens of the port of New-York or any two of them, and such bonds shall be assignable as bail bonds are by law, and be subject to such orders respecting the same as the said supreme court may judge it proper to make.

Such bonds assignable.

When the master shall be liable for citizens of the United States so imported.

XXXVII. *And be it further enacted,* That whenever any person so brought in any such ship or vessel and being a citizen of the said United States, shall by the said mayor or recorder be deemed likely to become chargeable to the said city, the master of such ship or vessel shall upon an order for that purpose remove the said person without delay to the place of his last settlement, and in default thereof shall be bound to pay all such charges and expences as the said city shall or may sustain or be put unto in and about the maintenance and removal of such person, to be sued for and recovered in like manner as the several penalties herein before mentioned are directed to be sued for and recovered.

Common council of New-York to appoint commissioners of the alms house

XXXVIII. *And be it further enacted,* That it shall be lawful for the mayor, aldermen and commonalty of the city of New-York, in common council convened, to nominate and appoint under the common seal of the said city, not more than five of the freeholders and inhabitants of the said city, to be the overseers of the poor thereof, by the name and style of "The commissioners of the alms-house and bridewell of the city of New-York;" which said persons being so appointed, or the major part of them, shall have the same power and authority of over-

feeling and providing for the poor of the said city, and they or any two of them shall have the same power and authority for putting or binding out apprentices and servants in the said city, and be subject to the same duties and penalties which the overseers of the respective towns in this state have or are subject to by this act.

Their duties.

XXXIX. *And be it further enacted,* That all monies to be raised and collected in the said city for the maintenance and support of the poor, and all fines and forfeitures to be incurred in the said city by virtue of this act, and which by this act are made payable to the overseers of the poor for the use of the poor of the said city, shall be paid into the hands of the chamberlain of the said city and shall be applied and disposed of in such proportions and from time to time, as the mayor, aldermen and commonalty of the same city, in common council convened, by warrant under the hand of the mayor or recorder of the said city, presiding in such common council, shall direct and appoint.

All monies collected in the said city by virtue of this act, payable to the chamberlain.

XL. *And be it further enacted,* That it shall be lawful for the common council of the said city to remove from office any person so by them appointed, at their pleasure, and also in manner aforesaid from time to time to fill all vacancies which shall be occasioned by such removal or by death or resignation, and also from time to time to appoint such other officers as they may deem proper for the government of the said alms house and bridewell, and to make and ordain such ordinances and regulations as they shall think necessary for the better government of the said alms house and bridewell, and the keepers, officers and servants thereof; *Provided,* Such ordinances and regulations be not contrary to the laws and constitution of this state or of the United States.

Common council to remove or appoint officers of the alms house and fill up vacancies.

And appoint other officers and make rules for the government thereof.

Proviso.

XLI. *And be it further enacted,* That in all cases where any of the present poor in any county of this state are maintained by the whole county or by more than one town, such poor persons shall continue to be so maintained.

Poor persons maintained by a county or several towns, so to continue.

C H A P. CLXXXV.

An ACT relative to the Office and Duties of the Comptroller of this State.

Passed 8th April, 1801.

I. **B**E it enacted by the People of the State of New-York, represented in Senate and Assembly, That the office of comptroller of this state shall continue until the twenty-eighth day of February, in the year of our Lord one thousand eight hundred and three, and shall be kept in the city of Albany, or in that part of the town of Watervliet lying

Office of comptroller continued.

Where to be kept.

His general
duties.

between the north bounds of the said city and the creek commonly called the Fifth-creek, and not more than one mile from Hudson's river ; and it shall be the duty of the comptroller to state all accounts between this state and the United States, and to examine and liquidate the claims of all persons against this state in cases in which provision shall have been made by law, and in cases where no such provision shall have been made or where he cannot liquidate any claim without further legislative provision, he shall examine and report the same and the facts concerning it to the legislature with his opinion thereon ; and to examine, adjust and settle the accounts of all persons indebted to this state and certify the amount or balance to the treasurer, and to draw warrants on the treasurer for the payment of the salaries and wages of all the legislative, executive, judicial and ministerial officers of the government of this state, and also for the payment of all monies by law directed to be paid to any other person, which warrants shall be paid by the treasurer ; and to keep an account between this state and the treasurer, and therein charge him with the balance in the treasury and with all monies received by him, and credit him with all warrants drawn on him as aforesaid ; and to exhibit to the legislature annually, at their first meeting after the first day of January, a complete statement of the funds of the state and of the annual revenue thereof, and of the amount of the salaries of the officers of government and other contingent expences, and other appropriations paid in the preceding year, distinguishing which are permanent or temporary, and suggest any improvements that may be made in the premises ; and to loan upon good landed security in this state all monies which may at any time be in the treasury, not otherwise appropriated or necessary to be retained for the support of the government, not exceeding one thousand dollars to any one person, taking a bond and mortgage in the name of the people of this state to secure the re-payment thereof with interest at the rate of six per cent per annum, the interest to be paid annually, and the principal at the end of ten years ; and the mortgage to contain a covenant that the mortgaged premises are free from all incumbrances whatsoever, and the bond to be conditioned, as well for the performance of the covenants contained in the mortgage as for the payment of the money loaned with the interest, and the premises mortgaged shall always exceed in value the amount of the sum so loaned, and no money shall be advanced to any borrower until such bond and mortgage shall be duly executed and the mortgage duly acknowledged or proved and registered according to law, in the office of the clerk of the county in which the mortgaged premises shall be situated, and be delivered to the comptroller, and such certificates

To loan monies not otherwise appropriated.

Amount to be loaned to each individual, and on what terms and security.

as he shall think necessary to shew that the mortgaged premises are free from all other incumbrances, and then the comptroller shall give the borrower a warrant on the treasurer for the money so to be loaned.

II. *And be it further enacted*, That it shall be lawful for any person indebted by mortgage to the people of this state or to any other person, except loan officers, in trust for the said people, at any time to pay to the treasurer the whole sum due on such mortgage for principal and interest, or any part thereof, and the comptroller is hereby directed to loan the principal sum, or any part thereof so paid, in the manner and on the terms above directed, for such time as remained unexpired for the payment thereof by such mortgage; and upon payment of the whole sum due on any such mortgage, to give a certificate thereof, which being duly proved or acknowledged, as in other cases of proving or acknowledging the payment of mortgages, and minuted on the margin of the registry of such mortgage, shall operate as a discharge of such registry.

Any person indebted to this state by mortgage may at any time pay the whole sum.

Registry of mortgage how to be discharged.

III. *And be it further enacted*, That if any person indebted to this state by mortgage, shall sell any part of the mortgaged premises, it shall be lawful for the comptroller at his discretion, in case he shall be satisfied that the premises so sold have been sold for a fair consideration, and that the residue of the mortgaged premises, exclusive of the buildings thereon, are sufficient to secure the monies remaining due on any such mortgage, upon payment of the purchase money to the treasurer of this state, to join in the conveyance to the purchaser, and thereby to release to him and his heirs the right of the people of this state by virtue of such mortgage to the premises so sold, which shall be a sufficient discharge of such mortgage as to the premises so released; but no such payment or release shall operate to discharge the mortgagor or the residue of the mortgaged premises from the payment of the residue of the money then due and to become due on such mortgage, and the comptroller shall loan all such monies so paid upon such mortgage in the manner herein before directed.

If mortgagor sell any part of the mortgaged premises the comptroller may release to the purchaser, if the residue be a sufficient security.

IV. *And be it further enacted*, That the comptroller of this state shall be and is hereby authorized and required, to vote for directors in the bank of the United States, in the bank of New-York, in the bank of Albany, and in the inland lock navigation companies respectively, either in person or by proxy on behalf of this state.

Comptroller to vote for directors of banks and inland lock navigation companies.

V. *And be it further enacted*, That no monies shall be paid out of the treasury of this state except on the order of the comptroller, and that all receipts for money hereafter to be paid to the treasurer shall be taken to the comptroller who shall countersign the same, and enter them in the proper book or books for that purpose in his office to the credit of the person for whom such payment shall

No monies to be paid out of the treasury except on the order of the comptroller.

His general
duties.

between the north bounds of the said city and the creek commonly called the Fifth-creek, and not more than one mile from Hudson's river ; and it shall be the duty of the comptroller to state all accounts between this state and the United States, and to examine and liquidate the claims of all persons against this state in cases in which provision shall have been made by law, and in cases where no such provision shall have been made or where he cannot liquidate any claim without further legislative provision, he shall examine and report the same and the facts concerning it to the legislature with his opinion thereon ; and to examine, adjust and settle the accounts of all persons indebted to this state and certify the amount or balance to the treasurer, and to draw warrants on the treasurer for the payment of the salaries and wages of all the legislative, executive, judicial and ministerial officers of the government of this state, and also for the payment of all monies by law directed to be paid to any other person, which warrants shall be paid by the treasurer ; and to keep an account between this state and the treasurer, and therein charge him with the balance in the treasury and with all monies received by him, and credit him with all warrants drawn on him as aforesaid ; and to exhibit to the legislature annually, at their first meeting after the first day of January, a complete statement of the funds of the state and of the annual revenue thereof, and of the amount of the salaries of the officers of government and other contingent expences, and other appropriations paid in the preceding year, distinguishing which are permanent or temporary, and suggest any improvements that may be made in the premises ; and to loan upon good landed security in this state all monies which may at any time be in the treasury, not otherwise appropriated or necessary to be retained for the support of the government, not exceeding one thousand dollars to any one person, taking a bond and mortgage in the name of the people of this state to secure the re-payment thereof with interest at the rate of six per cent per annum, the interest to be paid annually, and the principal at the end of ten years ; and the mortgage to contain a covenant that the mortgaged premises are free from all incumbrances whatsoever, and the bond to be conditioned, as well for the performance of the covenants contained in the mortgage as for the payment of the money loaned with the interest, and the premises mortgaged shall always exceed in value the amount of the sum so loaned, and no money shall be advanced to any borrower until such bond and mortgage shall be duly executed and the mortgage duly acknowledged or proved and registered according to law, in the office of the clerk of the county in which the mortgaged premises shall be situated, and be delivered to the comptroller, and such certificates

To loan monies not otherwise appropriated.

Amount to be loaned to each individual, and on what terms and security.

as he shall think necessary to shew that the mortgaged premises are free from all other incumbrances, and then the comptroller shall give the borrower a warrant on the treasurer for the money so to be loaned.

II. *And be it further enacted,* That it shall be lawful for any person indebted by mortgage to the people of this state or to any other person, except loan officers, in trust for the said people, at any time to pay to the treasurer the whole sum due on such mortgage for principal and interest, or any part thereof, and the comptroller is hereby directed to loan the principal sum, or any part thereof so paid, in the manner and on the terms above directed, for such time as remained unexpired for the payment thereof by such mortgage; and upon payment of the whole sum due on any such mortgage, to give a certificate thereof, which being duly proved or acknowledged, as in other cases of proving or acknowledging the payment of mortgages, and minuted on the margin of the registry of such mortgage, shall operate as a discharge of such registry.

Any person indebted to this state by mortgage may at any time pay the whole sum.

Registry of mortgage how to be discharged.

III. *And be it further enacted,* That if any person indebted to this state by mortgage, shall sell any part of the mortgaged premises, it shall be lawful for the comptroller at his discretion, in case he shall be satisfied that the premises so sold have been sold for a fair consideration, and that the residue of the mortgaged premises, exclusive of the buildings thereon, are sufficient to secure the monies remaining due on any such mortgage, upon payment of the purchase money to the treasurer of this state, to join in the conveyance to the purchaser, and thereby to release to him and his heirs the right of the people of this state by virtue of such mortgage to the premises so sold, which shall be a sufficient discharge of such mortgage as to the premises so released; but no such payment or release shall operate to discharge the mortgagor or the residue of the mortgaged premises from the payment of the residue of the money then due and to become due on such mortgage, and the comptroller shall loan all such monies so paid upon such mortgage in the manner herein before directed.

If mortgagor sell any part of the mortgaged premises the comptroller may release to the purchaser, if the residue be a sufficient security.

IV. *And be it further enacted,* That the comptroller of this state shall be and is hereby authorized and required, to vote for directors in the bank of the United States, in the bank of New-York, in the bank of Albany, and in the inland lock navigation companies respectively, either in person or by proxy on behalf of this state.

Comptroller to vote for directors of banks and inland lock navigation companies.

V. *And be it further enacted,* That no monies shall be paid out of the treasury of this state except on the order of the comptroller, and that all receipts for money hereafter to be paid to the treasurer shall be taken to the comptroller who shall countersign the same, and enter them in the proper book or books for that purpose in his office to the credit of the person for whom such payment shall

No monies to be paid out of the treasury except on the order of the comptroller.

be made ; and no receipt unless so countersigned shall be good evidence of such payment.

Certain deeds, books and papers to be deposited with him.

VI. *And be it further enacted,* That all deeds and conveyances, other than mortgages belonging to the people of this state, shall be deposited in the office of the secretary of this state, and that all mortgages, bonds, obligations and assurances for money, given to the people of this state or transferred to them by Gerard Bancker the late treasurer, or hereafter to be given to the said people, and all mortgages, leases and bonds in the hands of the surveyor general and belonging to the said people, or which may hereafter be taken by him in behalf of the said people, and all the books in the treasury containing the accounts of the auctioneers or vendue masters in the city of New-York, or copies of such of their accounts as remain unsettled, and all the books containing checks of certificates issued by the treasurer, or by any other person for or on account of this state, shall be deposited and kept in the office of the comptroller ; and all monies which shall from time to time become due to the people of this state on any of the said mortgages, bonds, obligations or assurances, and also all monies which shall become due from the loan officers of the respective counties, and which shall be certified to be so due by the comptroller, shall be paid to the treasurer of this state.

And monies to be paid to the treasurer on the certificate of the comptroller.

Certificates for three per cent stock and shares in the banks and inland navigation companies where deposited.

VII. *And be it further enacted,* That the certificates for the three per cent stock and for the shares in the bank of the United States and the bank of Albany shall continue to be deposited in the bank of New-York, and the certificates for the shares in the bank of New-York and in the inland lock navigation companies shall continue to be deposited in the bank of Albany.

Bank of New-York to receive the interest on three per cent stock and certain dividends and pay the same to the treasurer.

VIII. *And be it further enacted,* That the president, directors and company of the bank of New-York, be and they are hereby authorized to receive the interest which shall from time to time become due on the three per cent stock, and the dividends which shall from time to time be made on the shares belonging to the people of this state in the bank of the United States, and the monies so received shall be credited to the people of this state, and be paid to the treasurer on the order of the comptroller.

Treasurer to receive the dividends in the banks of New-York and Albany, and the navigation companies, and to pay the interest of monies loaned by them to the state.

IX. *And be it further enacted,* That the treasurer of this state shall on the order of the comptroller receive the dividends which shall from time to time be made on the shares belonging to the people of this state in the bank of New-York, in the bank of Albany, and in the inland lock navigation companies respectively, and shall also on the like order of the comptroller pay to the president, directors and company of the said banks respectively, out of any monies in the treasury, such sums as shall from time to time be certified by the comptroller to be due to them.

respectively for the interest of the money loaned by them to the people of this state.

X. *And be it further enacted*, That the treasurer shall pay to the order of the person administering the government of this state, on the warrant of the comptroller, such sums of money as the person administering the government of this state shall from time to time require, for defraying the charges and expences which have arisen or may arise in and about the defence of the rights of this state against the claim made under the state of Connecticut.

And to the governor the sums necessary to defend the rights of the state against the claim of Connecticut.

XI. *And be it further enacted*, That the comptroller shall be and is hereby required, as soon as conveniently may be, to collect and liquidate the expences incurred by the fortifications in this state for the defence of the United States, and shall also liquidate with the secretary of the treasury of the United States the specie value of the funded debt of the United States assumed by the said states of the debt of this state, on the principles contained in the act of congress, passed the fifteenth day of February, in the year one thousand seven hundred and ninety-nine, relative to the balances reported by the commissioners for settling the accounts between the United States and the several states.

Comptroller to liquidate certain expences and the debt of this state with the United States.

XII. *And be it further enacted*, That the comptroller is hereby directed and required to lease, from year to year, until other provision be made in the premises, the house belonging to the people of this state called the government house, in the city of New-York, with its appurtenances, upon the best terms he can get for the same.

And to lease the government house in the city of New-York.

XIII. *And be it further enacted*, That it shall be the duty of the comptroller to attend the legislature during their sessions, and all petitions and applications to the legislature for pecuniary compensation, when referred to the comptroller to make order, shall be by concurrent resolution, and when referred to him to report thereon, shall be by order of the house in which such petition shall be preferred.

To attend the legislature.

References to him how to be made.

XIV. *And be it further enacted*, That it shall be the duty of the comptroller to call on all persons intrusted with, or who shall have received any monies belonging to this state and not accounted for the same, to settle their accounts, and he is hereby authorized to issue a notification to every such person, or in case of his death, to his heirs, devisees, executors or administrators, requiring him or them to render to the comptroller at such time as he shall think reasonable, not less than sixty nor more than ninety days from the date of the said notification, all his accounts and vouchers for the expenditure of the said monies, and in default thereof, suits at the dis-

To call on all persons to settle their accounts.

And to issue notifications for that purpose.

On default to
commence
suits against
them.

Costs to be
recovered.

Form of noti-
fication and
how and by
whom to be
served and
returned.

In what case
the person no-
tified not li-
able to costs.

In what man-
ner the com-
ptroller shall
proceed to
settle ac-
counts.

If a balance
be due to the
state and un-
paid for a cer-
tain time, de-
faulter to be
prosecuted.

What shall be
evidence in
such action.

cretion of the comptroller shall be commenced for the same without further notice; and the party sued as aforesaid, unless sued as heir, devisee, executor or administrator, shall be subject to the costs and charges of such suits whether the ultimate decision shall be against him or in his favour.

XV. *And be it further enacted*, That the said notification shall be in the name of the people of this state, and shall be served by the sheriff of the county where the person to be notified shall reside, or his deputy, by delivering a copy thereof to the person to be notified, or by leaving such copy at his dwelling house or usual place of abode at least forty days before the time fixed in such notification for rendering such account as aforesaid, and the return of such notification to the comptroller's office, with the certificate of the sheriff indorsed thereon, that such service has been made by delivering a copy of such notification to the person so notified, shall be legal evidence of such proceedings, and shall be sufficient for the recovery of costs and charges; *Provided nevertheless*, That in all cases where such return shall be made of the service of such notice, and the person so notified shall within the time mentioned in such notification produce to the comptroller his accounts and vouchers as aforesaid, such person shall not be subject to costs and charges, unless it shall be found that he is indebted to the people of this state.

XVI. *And be it further enacted*, That in all cases where accounts shall be rendered to the comptroller within the time limited in such notification, or without any such notification being issued, the comptroller shall immediately proceed to examine such accounts and vouchers, and if the same are proper and sufficient in his opinion, he shall thereupon liquidate and settle the same accounts; but if any of the necessary vouchers are wanting or insufficient in his opinion, he shall give notice thereof to the party and require him to supply such defect within a reasonable time, not less than sixty nor more than ninety days, after the expiration of which the comptroller shall liquidate and settle such accounts upon the vouchers and proofs which shall have been delivered to him; and when the comptroller shall have settled any account he shall deliver or transmit a copy of such settlement to the party, and if any balance shall be thereby certified to be due to the state and the same shall not be paid to the treasurer within ninety days thereafter, the comptroller shall deliver the account thereof to the attorney general, who shall cause the same to be prosecuted and recovered; and in all such cases a copy of such settlement, certified by the comptroller, shall be deemed good and sufficient evidence to support such action, but it shall be lawful for the

defendant in any such action to plead and give in evidence all such matters as shall be legal and proper for his defence or discharge; and if any such defendant shall upon the trial in any such action give any evidence other than such as was produced to the comptroller, then and in every such case the defendant shall be subject to the costs and charges of such suit, whether the ultimate decision shall be against him or in his favour.

Where the defendant shall be subject to costs.

XVII. *And be it further enacted*, That in all cases where any number of commissioners, or other persons, shall have received any monies for which they are accountable to this state, it shall be lawful for the comptroller, at his discretion, to liquidate and settle the accounts of any one or more of them separately, and in such case no such person shall be allowed to plead in abatement to any suit to be brought for any balance which shall be certified to be due from him or them, or to give in evidence upon the trial thereof that any other person was concerned with him or them in the receipt or expenditure of the said money.

Where two or more persons are accountable one of them may settle or be sued separately.

XVIII. *And be it further enacted*, That in case any person who shall be notified as aforesaid to render his account and vouchers, shall not do so within the time limited in such notification, then and in every such case, if the comptroller can ascertain the amount thereof, he shall state an account thereof and compute and add thereto the interest thereof at the rate of six per cent per annum, from the time the same was received to the time fixed in such notification for rendering the account thereof, and transmit a copy of such account to the attorney general to be prosecuted and recovered as aforesaid; and in all such cases a copy of such account, certified by the comptroller, shall be deemed good and sufficient evidence to support such action, and the defendant shall be subject to the costs and charges of such suit, whether the final decision shall be against him or in his favour, except in suits against heirs, devisees, executors or administrators; but that it shall be lawful for the defendant in any such action to plead and give in evidence all such matters as shall be legal and proper for his defence or discharge.

If any person neglect to render his account how the comptroller shall proceed and prosecute.

What shall be deemed evidence in such suit.

The defendant liable to costs.

XIX. *And be it further enacted*, That in all such suits it shall be sufficient to state in the declaration that the defendant, or if the suit be against heirs, devisees, executors or administrators, the ancestors, testator or intestate, on the day of the settlement of such account by the comptroller and at a certain place, was indebted to the people of the state of New-York in the sum therein stated to be due, specifying the same, for so much money before that time by him received to their use, and so thereof being indebted, he the defendant or the ancestor, testator or intestate in consideration thereof afterwards, the same day and year and at the place aforesaid, promised to pay the

How to declare in such suit.

Special matter may be given in evidence.

If there be not sufficient money in the treasury to satisfy legal demands, the comptroller to borrow of the bank of New-York or Albany.

And to repay the same.

Nothing in this act to impair any other legal remedy in behalf of the state.

Nor to apply to any transactions before the 1st January, 1788.

Compensation to comptroller.

same to the people of the state of New-York, and to charge the breach of such promise in common form and to give the special matter in evidence.

XX. *And be it further enacted*, That if at any time there shall be legal demands on this state, by law directed to be paid, which there shall not be sufficient money in the treasury to satisfy, then and in every such case it shall be lawful for the comptroller, in the name and on behalf of the people of this state, to borrow a sum sufficient for that purpose of the bank of New-York or Albany, at the usual discount, and to draw a warrant for the same in favour of the the treasurer and charge him with the amount thereof, but shall take care to draw a warrant on the treasurer for the re-payment thereof as soon as there shall be money sufficient for that purpose in the treasury.

XXI. *And be it further enacted*, That nothing in this act shall be construed to take away or impair any legal remedy which might be used if this act was not in force, for the recovery of any debt or debts now due or hereafter to become due to this state, either in law or equity, from any person or persons whomsoever, nor to apply to any accounts or transactions that existed between the people of this state and any individuals previous to the first day of January, in the year one thousand seven hundred and eighty-eight.

XXII. *And be it further enacted*, That the comptroller shall be allowed as a compensation for his services and expences, including clerk hire, office hire and stationary, a salary of two thousand five hundred dollars a year, payable quarter yearly, and it shall be lawful for him to draw warrants on the treasury for the payment thereof as the same shall become due.

C H A P. CLXXXVI.

An ACT to regulate Highways.

Passed 6th April, 1801.

Duties of the commissioners of highways.

I. **B**E it enacted by the People of the State of New-York, represented in Senate and Assembly, That it shall be the duty of the commissioners of highways in the several towns of this state, except in the city and county of New-York, the counties of Suffolk, Queens, Kings and Richmond, to give directions relative to the repairing of the roads and bridges within the towns for which they are respectively appointed, to regulate the roads already laid out, and to alter such as they or a majority of them shall conceive inconvenient, to cause such of the roads as are not already described and recorded to be ascertained, described and entered of record in the town clerk's office, to cause to be kept in repair the highways and bridges erect

ed, or which may be erected over streams intersecting highways, to require the overseers from time to time and as often as they shall deem necessary to warn the people assessed to work highways to come and work thereon, with such implements, carriages, cattle and sleds, as the said commissioners or any one of them shall direct, and shall have full power and lawful authority to lay out such new roads in the several towns as they may deem necessary and proper; and that all such roads so to be laid out shall be done on actual survey.

II. *And be it further enacted,* That whenever any person shall conceive himself aggrieved by the determination of the said commissioners, either in laying out or altering any such road, it shall be lawful for such person to appeal to any three of the judges of the court of common pleas for the county in which such road is situated, whose duty it shall be to convene and decide such appeal, and their decision or that of any two of them, shall be conclusive in the premises; for which services every such judge shall be entitled to receive two dollars for every day employed therein, to be paid by such party appealing where the determination of the commissioners shall be affirmed, but where such determination shall be reversed the same shall be collected and paid as part of the contingent charges of the county.

Appeal from the commissioners to the judges of the court of common pleas.

Compensation to the judges.

III. *And be it further enacted,* That the commissioners of the respective towns; or the major part of them, shall annually, at least ten days before the annual town meeting, if they shall judge the same necessary, by writing under their hands, to be lodged with the town clerk and by him to be entered in the town book, divide their respective towns into as many road districts as they shall judge convenient.

Commissioners to divide the towns into road districts.

IV. *And be it further enacted,* That when the commissioners of any town shall disagree with the commissioners of any other town in the same county, relating to the laying out of a new road or the alteration of an old road extending into both towns, or when the commissioners of a town in one county shall disagree with the commissioners of a town in another county, relative to laying out a new road or altering an old road which shall extend into both counties, the commissioners of both towns shall meet together at the request of either disagreeing commissioners, and make their determination upon such subject of disagreement.

Commissioners of adjoining towns in the same or different counties to meet to settle differences between them relative to roads.

V. *And be it further enacted,* That it shall be the duty of the overseers of highways to repair and keep in order the highways within the several districts for which they shall be elected, to warn all persons assessed to work on the highways in their respective districts to come and work when required so to do by the commissioners, or any one

Duties of the overseers of highways.

Special matter may be given in evidence.

If there be not sufficient money in the treasury to satisfy legal demands, the comptroller to borrow of the bank of New-York or Albany.

And to repay the same.

Nothing in this act to impair any other legal remedy in behalf of the State.

Not to apply to any transactions before the 1st January, 1788.

Compensation to comptroller.

same to the people of the state of New-York, and to charge the breach of such promise in common form and to give the special matter in evidence.

XX. *And be it further enacted*, That if at any time there shall be legal demands on this state, by law directed to be paid, which there shall not be sufficient money in the treasury to satisfy, then and in every such case it shall be lawful for the comptroller, in the name and on behalf of the people of this state, to borrow a sum sufficient for that purpose of the bank of New-York or Albany, at the usual discount, and to draw a warrant for the same in favour of the treasurer and charge him with the amount thereof, but shall take care to draw a warrant on the treasurer for the re-payment thereof as soon as there shall be money sufficient for that purpose in the treasury.

XXI. *And be it further enacted*, That nothing in this act shall be construed to take away or impair any legal remedy which might be used if this act was not in force, for the recovery of any debt or debts now due or hereafter to become due to this state, either in law or equity, from any person or persons whomsoever, nor to apply to any accounts or transactions that existed between the people of this state and any individuals previous to the first day of January, in the year one thousand seven hundred and eighty-eight.

XXII. *And be it further enacted*, That the comptroller shall be allowed as a compensation for his services and expences, including clerk hire, office hire and stationary, a salary of two thousand five hundred dollars a year, payable quarter yearly, and it shall be lawful for him to draw warrants on the treasury for the payment thereof as the same shall become due.

C H A P. CLXXXVI.

An ACT to regulate Highways.

Passed 8th April, 1801.

Duties of the commissioners of highways.

I. **B**E it enacted by the People of the State of New-York, represented in Senate and Assembly, That it shall be the duty of the commissioners of highways in the several towns of this state, except in the city and county of New-York, the counties of Suffolk, Queens, Kings and Richmond, to give directions relative to the repairing of the roads and bridges within the towns for which they are respectively appointed, to regulate the roads already laid out, and to alter such as they or a majority of them shall conceive inconvenient, to cause such of the roads as are not already described and recorded to be ascertained, described and entered of record in the town clerk's office, to cause to be kept in repair the highways and bridges erect

ed, or which may be erected over streams intersecting highways, to require the overseers from time to time and as often as they shall deem necessary to warn the people assessed to work highways to come and work thereon, with such implements, carriages, cattle and sleds, as the said commissioners or any one of them shall direct, and shall have full power and lawful authority to lay out such new roads in the several towns as they may deem necessary and proper; and that all such roads so to be laid out shall be done on actual survey.

II. *And be it further enacted,* That whenever any person shall conceive himself aggrieved by the determination of the said commissioners, either in laying out or altering any such road, it shall be lawful for such person to appeal to any three of the judges of the court of common pleas for the county in which such road is situated, whose duty it shall be to convene and decide such appeal, and their decision or that of any two of them, shall be conclusive in the premises; for which services every such judge shall be entitled to receive two dollars for every day employed therein, to be paid by such party appealing where the determination of the commissioners shall be affirmed, but where such determination shall be reversed the same shall be collected and paid as part of the contingent charges of the county.

Appeal from the commissioners to the judges of the court of common pleas.

Compensation to the judges.

III. *And be it further enacted,* That the commissioners of the respective towns; or the major part of them, shall annually, at least ten days before the annual town meeting, if they shall judge the same necessary, by writing under their hands, to be lodged with the town clerk and by him to be entered in the town book, divide their respective towns into as many road districts as they shall judge convenient.

Commissioners to divide the towns into road districts.

IV. *And be it further enacted,* That when the commissioners of any town shall disagree with the commissioners of any other town in the same county, relating to the laying out of a new road or the alteration of an old road extending into both towns, or when the commissioners of a town in one county shall disagree with the commissioners of a town in another county, relative to laying out a new road or altering an old road which shall extend into both counties, the commissioners of both towns shall meet together at the request of either disagreeing commissioners, and make their determination upon such subject of disagreement.

Commissioners of adjoining towns in the same or different counties to meet to settle differences between them relative to roads.

V. *And be it further enacted,* That it shall be the duty of the overseers of highways to repair and keep in order the highways within the several districts for which they shall be elected, to warn all persons assessed to work on the highways in their respective districts to come and work when required so to do by the commissioners, or any one

Duties of the overseers of highways.

of them, to collect all fines and commutation money, and to execute all such orders of the commissioners of the town to which they belong as shall be given by them in conformity to law; and if any overseer shall be employed more days in executing the several duties enjoined on him by this act than he is assessed to work on the highways, he shall be paid for the excess at the rate of one dollar per day, and be allowed to retain the same out of the monies which may come into his hands for fines in conformity to this act, but shall not be permitted to commute for the days he is assessed.

Persons liable
to be assessed.

Persons ex-
empted.

VI. *And be it further enacted*, That all freeholders and every free male inhabitant, being above the age of twenty-one years, shall be assessed to work on the public roads and highways; *Provided however*, That all ministers of the gospel and priests of every denomination whatsoever, and the agents, superintendants, artificers and workmen of every kind employed in and about the Albany glass house factory belonging to the Hamilton manufacturing society, shall be exempted from working on the highways during the time they shall be so employed.

Commission-
ers in each
town to meet
and apportion
to each per-
son the num-
ber of days he
is to work.

Lists of such
persons how
to be furn-
ished.

VII. *And be it further enacted*, That the commissioners for each town in the several counties aforesaid shall meet within eighteen days after they shall be so chosen, at the place of town meeting on such day as they shall agree upon, and as often afterwards as need shall be, and at such time and place as they shall think meet; that each of the overseers of the road districts respectively shall deliver a list subscribed by such overseer to the clerk of the town for which he is elected or appointed, within sixteen days after the day of election, which list shall contain the names of all the inhabitants in such road district, who are in and by this act made liable to work on the highways, that the said clerk shall deliver such list to the commissioners of the town, who or a majority of them shall at their next meeting, or as soon as may be thereafter, affix to the names of each person mentioned in such lists respectively, the number of days which such person shall be liable to work on the highways in the same year, to be determined by the commissioners in proportion to the estate and ability of each person; and the commissioners shall thereupon after causing the clerk of the town to make a copy of such list, and after the said commissioners or a majority of them shall have subscribed the copies of such lists, cause the same respectively to be delivered to the overseers of the town who returned the same in the manner herein before mentioned, or their successors in office; *Provided always*, That if the name of any person shall be left out of such list, or there shall be an accession of new inhabitants, such persons whose names are omitted or shall move into the town shall from time to

Lists to be
from time to
time correct-
ed.

time be added to the said list, and the persons be rated by the said commissioners to work on the highways ; *Provided also*, That no person shall be assessed more than thirty days nor less than one day in one year ; *And provided further*, That the whole number of days assessed in any town shall be at least three times the number of the persons subject to work on the highways in such town ; *And further*, That not less than one half of the days so assessed shall be worked out in each road district before the first day of July in every year.

What number of days to be assessed to each person and how to be worked.

VIII. *And be it further enacted*, That every person subject by this act to work on the highways, other than an overseer of the highways, and who shall be assessed in manner aforesaid, shall work the whole number of days he shall be so assessed, or commute for the same at and after the rate of sixty-two and an half cents for each day, which money shall be paid to the overseer of the highways of the district in which the person paying the same shall reside, to be by the said overseer applied and expended in the improvement of the roads and bridges in the same district.

Rate of commutation.

IX. *And be it further enacted*, That when it shall happen that in any of the counties subject to this act, a greater quantity of work is required to keep in repair the roads than has been rated on the inhabitants of any of the road districts in any town by the commissioners at their annual meeting agreeable to this act, then and in such case it shall be lawful for the overseers of roads in each district, and they are hereby required to make out another assessment in the same proportion as near as may be, not to exceed one third of the number of days assessed before in the same year.

If the number of days be insufficient, the overseers may make a new assessment on the same proportion.

X. *And be it further enacted*, That if any overseer of the highways shall require any team, cart, waggon or plough, with a pair of horses or oxen and a man to manage the same, from any person so assessed as aforesaid and having the same, and who shall not commute for the days he may be assessed, the person furnishing the same when warned so to do by any overseer shall be entitled to a credit for three days work for one man, and the fine for neglect or refusal shall be proportionable, that is to say, three times the fine to be imposed for the neglect of one person for one day.

A team, waggon and horse, &c. for one day to be entitled to a credit of three days.

Penalty for not furnishing the same.

XI. *And be it further enacted*, That when any person assessed to work on the highways shall be warned by an overseer to attend on a day and place certain with such implements, cattle and carriages as the overseer shall require, and shall neglect or refuse to appear in person, or by an able bodied man as a substitute, or to bring with him such implements, carriages or cattle as required, or shall remain idle or not work faithfully, or hinder others

Penalty on persons refusing to work or commute when required, or not working faithfully.

How recovered
and applied

from working, or neglect or refuse to pay the commutation money in lieu of such attendance, such offender shall for every such offence forfeit the sum of one dollar; and it shall be the duty of such overseer, and he is hereby required within six days thereafter, in every case in which he shall deem the excuse for such neglect or refusal insufficient, to make complaint thereof in writing under his hand to one of the justices of the peace of the town for which he shall be elected; if any there be, and if there be no justice of the peace in such town, then to the next justice of the adjoining town, and the justice to whom such complaint shall be made, shall forthwith issue a warrant under his hand and seal, directed to any constable of the ward or town where such delinquent shall reside, commanding him to levy such fine on the goods and chattels of such offender, and the justice shall be entitled to receive twenty-five cents for issuing such warrant, and the constable the like fees as are allowed for the like services by the act, entitled *An act for the more speedy recovery of debts to the value of twenty-five dollars*, and shall forthwith pay the said fines to the justice who issued the said warrant, who is hereby required to pay the same to the overseer who entered the complaint, to be by him expended in improving the roads and bridges in the district of which he is overseer; *Provided*, That the whole of the costs shall not exceed the sum of three dollars; *And provided also*, That no excuse for refusal or neglect on any occasion shall exempt the person excused from working the whole number of days he may be assessed, or paying the commutation in lieu of it, during the year for which he shall be assessed, and that no person shall be required to work on any highway other than in the said district in which such person resides.

No person to
be excused
from working
or commuting

No person to
work out of
his own
district.

Number of
hours to work
on each day
and penalty
for neglect.

XII. *And be it further enacted*, That every person assessed to work on the highways, and who shall be warned to work, and shall appear in person or by an able bodied man as a substitute shall actually work eight hours in each day, and shall be liable to be fined in the sum of twelve and an half cents for every hour such person or substitute shall be in default, to be recovered and expended in like manner as the penalty for refusing or neglecting to work when warned is by this act directed to be recovered and expended.

Overseers to
account yearly
to the commis-
sioners of the
town relative
to the execution
of this
act.

XIII. *And be it further enacted*, That each overseer of the highways to be chosen or appointed hereafter, shall on the second Tuesday next preceding the time of holding the annual town meeting in such town, within the year for which he is elected or appointed, render an account in writing to the commissioners of the town, or any two of them, who shall meet together on that day for the purpose of receiving such return, of all persons assessed to

work on the highways in the district of which he is overseer, of all those who have actually worked on the road or highways, with the number of days they have so worked, of all those who have been fined, and the sums in which they have been fined, of all those who have commuted, of the manner in which the monies arising from fines and commutation have been expended, and shall pay to the commissioners all monies remaining in his hands unexpended, to be applied in making and improving the roads and bridges in said county in such manner as they shall direct; and if any overseer shall neglect or refuse to render such account, or having rendered such account shall refuse or neglect to pay any balance which may then be payable by him, he shall forfeit the sum of fifty dollars, to be recovered by the said commissioners or the survivors or survivor of them, in their or his name, by action of debt in any court having cognizance thereof with costs of suit, and the forfeiture so recovered shall by the said commissioners or such survivors or survivor of them, be applied in making and improving the roads and bridges in such town.

And pay the balance remaining in their hands under a penalty.

XIV. *And be it further enacted*, That every overseer of highways who shall neglect or refuse to warn the people assailed to work on the highways, to come to work with such implements, carriages and cattle as may be necessary, when required so to do by the commissioners, or either of them, or to collect the monies that may arise from fines or commutation, or to perform any of the duties and services required by this act, or which may be enjoined on him by the commissioners of the town of which he is elected, or a majority of them, shall forfeit for every such neglect or refusal the sum of ten dollars, to be recovered by any one of the commissioners of the same town in his own name, before any justice of the peace in the same county with costs of suit, to be reported, paid and employed in the same manner as the monies to be paid into the hands of the commissioners by the preceding section of this act are directed to be reported, paid and employed; and if any vacancy of overseers shall happen by death or otherwise, the commissioners of the town in which such vacancy shall happen shall appoint other or others in his or their stead, and the overseer or overseers so appointed shall have the same power, be subject to the same orders, and liable to the same fines, forfeitures and penalties as overseers chosen by this act are liable and subject to.

Penalty on overseers for neglect of duty.

How recovered & applied.

Commissioners to fill up vacancies in the office of overseer.

XV. *And be it further enacted*, That when any road shall be laid out through inclosed or improved lands, the owner or owners thereof shall be paid such damages as such owner or owners may sustain by reason thereof, which damages shall be determined and assessed by two justices of the

Damage of inclosed or improved lands how assessed and collected.

peace, and by the oaths of twelve reputable freeholders, not having an interest in the land so to be laid out into a road or highway ; that the said freeholders shall be summoned by any constable of the town in which such road or highway shall be laid out as aforesaid, by virtue of a warrant to be issued by the said two justices of the peace for that purpose, and if any road within any town so laid shall be laid out at the request of twelve reputable freeholders of said town as a common public highway, the whole of the said damages, together with the charges of the commissioners and summoning the jury, shall be laid before the board of supervisors of the county, who shall cause the same to be raised, levied and collected in said town in the same manner as the other town charges are by law directed to be raised, levied and collected, and order the same to be paid to the commissioners of the said town who shall pay the occupant the sum assessed to him, and appropriate the residue to satisfy the costs ; *Provided nevertheless*, That no road or highway shall be laid through any orchard or garden without the consent of the owner or owners thereof, if such orchard shall be of the growth of at least four years, or such garden shall have been cultivated as such at least four years before such highway or road shall be laid out ; *And provided further*, That it shall be at the election of the occupant of the land so included in any public highway or private road, to have his damages assessed by two justices of the peace and a jury as aforesaid, or by three commissioners to be appointed by a judge of the court of common pleas of the county in which such land may be situated, whose duty it shall be to do the same, in which case the costs of such assessment shall be paid as is above provided in case of an assessment by a jury ; *And provided also*, That no road shall be laid out through any improved land without the consent of the occupant, unless upon the application of twelve reputable freeholders of the town in which such road shall be laid out, certifying upon oath that such road is necessary and proper.

No road thro' certain orchards or gardens without consent.

How occupant may elect to have his damages assessed.

No road thro' improved lands without consent or the oath of twelve freeholders.

Private roads how laid out and damages therefor assessed.

XVI. *And be it further enacted*, That upon application to the commissioners of any town for a private road, the commissioners of the town in which such road is desired shall cause the overseer of highways of the district to summon twelve freeholders of the same town to meet on a day certain, of which day notice shall be given by the overseer to the owner or occupant, and being so met they shall view the lands through which such road is applied for ; and if they shall certify under oath that such road is absolutely necessary, the commissioners shall lay out the same, and cause a record thereof to be made in the town clerk's office, and shall cause the damage to be assessed in like manner as if the same was a public highway, which shall be paid by the person or persons applying for such

road ; and such road when so laid out shall be for the use of such applicant or applicants, his or their heirs and assigns, but not to be converted to any other use or purpose than that of a road ; *Provided always*, That the occupant or owner of the land through which such road shall be laid out, shall not be prevented making use thereof as a road, if he shall signify his intention of making use of the same at the time when the jury or commissioners are to ascertain the damages sustained by laying out such road.

Proviso.

XVII. *And be it further enacted*, That all public roads to be laid out by the commissioners of any town, shall not be less than four rods wide, and all private roads shall not be more than three rods wide.

Width of roads.

XVIII. *And be it further enacted*, That all public highways heretofore laid out and allowed by any law of this state, and now in use within the counties subject to this act, and of which a record shall have been made in the office of the clerk of the county or town, shall be taken and deemed as public highways and continue such unless altered in conformity to the provisions contained in this act ; *Provided always*, That where any roads have been used as public highways for twenty years or more next preceding the twenty-first day of March, one thousand seven hundred and ninety-seven, the same shall be taken and deemed as public highways although no record thereof has been made, unless they shall be altered in manner aforesaid ; and that it shall be the duty of the commissioners to order the overseers of highways to open all roads to the width of two rods at least, which they shall judge to have been used as public highways for twenty years preceding the said twenty-first day of March, one thousand seven hundred and ninety-seven.

Former highways laid on and recorded confirmed.

If used for 20 years, established although not recorded.

All roads to be opened to two rods wide.

XIX. *And be it further enacted*, That if any person within any of the said towns shall hereafter obstruct any highway or road, or shall fill up or place any obstruction in any ditch constructed for draining the water from any road, such person so offending shall forfeit for every such offence the sum of five dollars, to be recovered with costs in the name of any person who shall make complaint thereof before any justice of the peace of the county where the offence shall happen, upon the oath of one or more credible witness or witnesses, and levied by distress and sale of the goods and chattels of the offender, by warrant from the justice to be directed to any constable of the town where such offender shall reside ; and the said constable is hereby required to pay such penalty into the hands of the commissioners of highways for the town in which the offence was committed, to be by them applied in improving the public roads and bridges in said town.

Penalty for obstructing highways.

How levied and applied.

Penalty for
not removing
encroach-
ments on the
highway.

Encroach-
ments dispo-
sed how to be
determined.

Proviso.

Penalty for
falling trees
in the high-
way and not
removing
them.

XX. *And be it further enacted,* That in every case where a highway has been laid out and the same hath been encroached upon by any present or former occupant of the land through or by which such highway runs, the commissioners of the town shall, if in their opinion it be deemed necessary, order the fences to be removed so that such highway may be of the breadth originally intended; and if such removal shall not be made in sixty days after such notice given, the occupant to whom the notice shall be given shall forfeit and pay the sum of fifty cents for every day that such fences shall continue unremoved after the expiration of the said sixty days aforesaid, to be recovered in like manner as penalties are directed to be recovered in the next preceding section of this act; *Provided nevertheless,* That in case of denial of such encroachment by any occupant, the commissioners shall apply to any justice of the peace of the county for a precept, directed to an overseer of highways of the same town, to summon twelve freeholders thereof to meet on a certain day, of which day notice shall be given by the overseer to one of the commissioners and also to the occupant, on which day the jury so summoned, after being duly sworn, shall inquire whether any encroachment hath been made and by whom, and if they find that such encroachment hath been made, they shall certify the same and by whom, and if made by the then occupant or any former occupant, the then occupant shall remove his fences within sixty days thereafter under the penalty aforesaid, and shall pay all the costs attendant on such inquiry, to be recovered by any one of the commissioners before any justice of the peace of the county; but if they shall find that no encroachment hath been made, they shall so certify and ascertain the damages the then occupant hath sustained by such suit, which together with costs of suit shall be paid by the commissioner or commissioners out of any monies in his or their hands appropriated to the making and repairing highways; *Provided,* That no person shall be obliged to remove any fence, except between the first day of April and the first day of November in any year.

XXI. *And be it further enacted,* That if any trees fall upon any inclosed land which hereafter shall be laid out or be fallen by any person, his agent or servant, into any highway, or into any river now used as an highway, and shall not be removed but continue in such highway or river for the space of two days after notice given thereof by any person, the person or persons occupying the farm or lot from which such tree or trees shall be fallen, shall forfeit the sum of fifty cents for every tree which shall be so fallen or suffered to remain in such highway or river until the third day, and a like sum for every day thereafter until the same shall be removed, to be recovered and ap-

plied in the same manner as penalties for obstructing roads are directed to be recovered and applied ; and in case any person shall cut down any tree or trees on land not occupied by him, so that they fall into any highway or river as aforesaid, unless by the order and consent of the occupant, the person so offending shall forfeit to such occupant the sum of one dollar for every tree so fallen, and the like sum for every day the same shall remain therein, to be recovered as aforesaid with costs ; *And further*, That if any person shall cut or cause to be cut down any tree, so that the same shall fall into the Schohariekill or Catskill, West Canada-creek, or Black-creek in the town of Watervleit in the county of Albany, and shall not remove the same out of such kill or creek within twenty-four hours thereafter, he shall forfeit and pay for every tree so cut down and left remaining five dollars ; the one half for the use of any person who will sue for the same, and the other half to be paid to the commissioners of highways of the town wherein the offence shall be committed, to be applied to the repairs of the highways of such town, and to be recovered before any justice of the peace with costs of suit.

And on any person cutting the same on another's land.

And for falling trees into certain streams and not removing them.

XXII. *And be it further enacted*, That all trees standing or lying on any land, through which any public highways shall be laid out, shall be for the proper use of the owner or occupant of such land, except such of them as may be requisite to make or repair the highways or bridges on the same land and for preserving the said public highways from washing away by the current or motion of any river, creek, lake or waters that may adjoin said public highway.

Trees in the highway shall belong to the owner of the soil, unless required for repairs.

XXIII. *And be it further enacted*, That no swinging or other gates shall be allowed on any public highway laid out by virtue of this act, or which has heretofore been laid out, other than such public highways as run through lands liable to be overflowed by the waters of the adjacent rivers or streams, in such manner as to remove the fences thereon, and that all such gates shall be erected and kept in good repair by the overseers of the highway of the town, at the proper costs and charges of the occupant of the land for whose benefit the same shall be erected ; and if more than one gate shall be erected and the intermediate land between the gates at the extremities of such land shall be in the occupation of more than one person benefited by such gates, the whole charge of erecting and keeping the same in repair shall be borne by all the occupants benefited thereby, in proportion to the extent of land each occupies adjoining the highway, between the gates at the extremity aforesaid ; and in case of the neglect or refusal of any occupant to pay his proportion, the same shall be levied with costs of suit in like manner as fines

Swinging gates when permitted and the expense how defrayed.

How recovered.

Penalty on persons leaving open such gates or riding over adjoining grounds.

The party injured also entitled to his action.

Proviso as to gates in Westchester.

Commissioners to account annually and to whom.

Who shall audit such accounts.

A statement of the improvements necessary to be laid before the board of supervisors.

are by this act directed to be levied for refusing or neglecting to work on the highways, of all which gates an account shall be filed by the commissioners in the town clerk's office; and if any person shall open any such gate and not immediately after having passed the same close it, or shall wilfully and unnecessarily ride over any of the grounds adjoining such road on which such gates shall be permitted, to the damage of the occupant or occupants thereof, each offender shall forfeit for every such offence the sum of one dollar, to be recovered by any one of the commissioners of the same town in the manner prescribed by this act for recovering fines for neglect or refusal to work on the highways; *Provided*, That such penalty shall not be deemed a satisfaction for such damage, but the occupant or occupants of such grounds shall be entitled to an action for the recovery of damages, the payment of such penalty notwithstanding; *And provided further*, That swinging or other gates allowed by law prior to the twenty-first day of March, one thousand seven hundred and ninety-seven on public highways or private roads in the county of Westchester, are hereby permitted at the discretion of the commissioners of highways of the town in which the same are, the said gates being kept in good repair by the owner or owners thereof.

XXIV. *And be it further enacted*, That the commissioners of highways in each of their respective towns, shall render to the supervisor, town clerk and justices of the peace, or a majority of them, at their annual meeting for auditing the accounts of the overseers of the poor of their respective towns, an account of the labour assessed and performed, of the sums by them received for fines and commutation, and all other monies received under this act, and the improvements which have been made on the roads and bridges in their respective towns during the year immediately preceding such report, together with an account of the state of such roads and bridges, with a statement of the improvements necessary to be made thereon, and an estimate of the probable expence of making such improvements beyond what the labour to be assessed in that year will accomplish; and said supervisor, town clerk and justices at their meeting, as aforesaid, shall examine said account and make out a certificate containing the substance thereof, and deliver the same certificate to the town clerk of such town, to be by him kept on file for the inspection of any of the inhabitants of said town; *And further*, That the said commissioners shall under their hands deliver to the supervisor of such town a like statement of the improvements necessary to be made on the roads and bridges aforesaid, together with the probable expence thereof as aforesaid, which supervisor shall lay the same before the board of supervisors at their next meeting;

and the same board of supervisors are hereby required to cause the same to be assessed, levied and collected in such town in the same manner as the other contingent charges are by law directed to be levied and collected; which sums when so collected, shall be paid over without delay by the collector or collectors of such towns, out of the first monies coming into his or their hands, except the monies raised in such town for the support of the poor thereof, to the town clerk of such town, and shall by him be paid to the overseers of highways of such town or to one or more of them, on the order of said commissioners; *Provided*, That the monies to be raised as aforesaid in any such town, shall not exceed in any one year the sum of two hundred and fifty dollars.

Supervisors to cause the expenses thereof to be assessed and levied.

Monies how appropriated.

Provide.

XXV. *And be it further enacted*, That it shall be the duty of the commissioners of highways in the several towns of this state, to cause mile boards or stones to be erected, where not already erected, on the post roads and such other public county roads in their respective towns as they may think proper, at the distance of one mile from each other, with such fair and legible inscriptions or directions as they may think proper; and if any person shall destroy, remove, injure or deface such mile boards or stones, they shall be liable to pay ten dollars for each mile board or stone so destroyed, removed, injured or defaced, to be recovered with costs of suit before any justice of the peace of the county where the offence shall be committed, which penalties so levied and collected shall be paid to the commissioners or any one of them, in the town where such offence shall be committed; and it shall be the duty of the said commissioners forthwith to repair the mile boards or stones so injured or removed out of the monies arising from such penalties.

Commissioners to erect mile boards or stones.

Penalty for injuring the same.

XXVI *And be it further enacted*, That whenever it shall appear to the board of supervisors of any of the counties subject to this act, that any one of the towns in such county would be unreasonably burthened by erecting or repairing any necessary bridge or bridges in such town, the board of supervisors in such county shall be and they are hereby authorized and required, to cause such sum of money to be raised as will be sufficient to defray the expenses of erecting or repairing such bridge or bridges, or such part thereof as they may deem proper, which sum of money shall be levied, collected and paid at the same time and in like manner as the contingent charges of such county are levied, collected and paid, which said money shall be paid over unto the commissioners of the town in which the same is to be expended on the order of the supervisor thereof; *Provided nevertheless*, That the supervisors shall not cause to be levied and raised on any county any sum exceeding one thousand dollars, in any

Supervisors when to cause bridges to be erected or repaired at the expense of the county.

Not above 1000 dollars to be raised in one year.

An appeal
from the su-
pervisors to
the court of
common
pleas.

one year; *And provided further*, That in case the commissioners of highways of any such town shall be dissatisfied with the determination of the said supervisors touching an allowance for any such bridges, such determination shall on the application of the commissioners be revised by the court of common pleas for the same county, whose order in the premises shall be observed by every such board of supervisors.

Compensation
to the com-
missioners.

XXVII. *And be it further enacted*, That each of the commissioners shall be allowed the sum of one dollar per day for every day they shall be employed in executing the duties enjoined on them by this act, and their accounts shall be audited and paid as other town officers are paid.

Commis-
sioners to erect
guide posts at
the intersec-
tion of roads.

XXVIII. *And be it further enacted*, That the commissioners of each of the towns aforesaid, shall out of any monies which may come into their hands by virtue of this act, cause guide posts with proper descriptions and devices to be erected at the intersection of all the post roads in this state and bye roads leading to or from any town, village or landing, and it shall be the duty of the overseers of the highways in the several towns to maintain and keep in repair such guide posts as may be erected by order of the commissioners within the limits of the districts for which they are elected or appointed respectively; and every person who shall injure or deface any such description or destroy any of the said guide posts, shall for every such offence forfeit the sum of ten dollars, to be recovered by any one of the commissioners or overseers of highways of the town, before any justice of the peace of the county, in the same manner as penalties for obstructing roads are directed to be recovered, part of which to be appropriated by the person recovering the same in replacing such posts or repairing such injury, and the remainder to be paid in the same manner as penalties for obstructing roads are directed to be paid.

Penalty for
injuring such
guide posts.

Regulation in
certain coun-
ties of carria-
ges and trav-
ellers passing.

XXIX. *And be it further enacted*, That in the counties of Washington, Saratoga, Schoharie, and that part of the county of Albany to the northward of the south bounds of the town of Bethlehem, where any carriages or sleighs meet each other on the road or highway, the persons in carriages or sleighs going from the city of Albany, shall give way to those going towards the said city; and all persons travelling eastward in any of the public roads and highways in the counties of Dutchess, Columbia and Rensselaer, shall give way to those travelling westward; and that in all cases of persons meeting each other on any of the highways in the counties of Orange and Westchester, travelling in carriages, sleighs or waggons, each person so meeting shall go to that side of said highway on his left, so as to enable the carriage, sleigh or wagon so meeting to pass each other, under the penalty of two dollars for every offence, to be recovered as aforesaid.

XXX. *Provided always, and be it further enacted,* That it shall be lawful for the mayor, aldermen and commonalty of the city of Albany, and the commissioners of highways in and for the town of Watervliet and the city of Schenectady, in the county of Albany, to lay out and open two public roads or highways leading from the said city of Albany to the city of Schenectady, at the distance of one rod from each other, or as nearly so as conveniently may be, and that all persons going in carriages or sleighs from or to the said city of Albany shall take the right hand road; and that in all cases of carriages or sleighs meeting westward of the city of Schenectady, on the great roads running eastwardly and westwardly on either side of the Mohawk-river, and contiguous thereto, and from the village of Utica in the county of Oneida to the town of Canandarqua in the county of Ontario, the carriages or sleighs going westwardly shall give way to those travelling eastwardly, under the penalty of three dollars for each offence, to be recovered and applied in the same manner as other penalties mentioned in this act are recovered and applied.

Two public roads to be laid out between Albany and Schenectady.

Regulation on travelling there and certain other roads.

XXXI. *And be it further enacted,* That where any money may have been paid into the hands of any collector or other officer of any of the towns of this state, for the purposes of erecting or repairing bridges and improving highways by virtue of any former law, the same shall be paid into the hands of the commissioners of highways of the respective towns where any such sums may have been collected, to be applied to the several objects for which the said several sums of money were raised and collected; *Provided nevertheless,* That the sums of money already directed to be levied by the supervisors of any county on the requisition of the superintendants of highways thereof, shall be expended by such superintendants in like manner as if this act had not passed.

Monies already collected for roads and bridges how applied.

Provide.

XXXII. *And be it further enacted,* That the city of Hudson shall be considered as a town for all purposes intended by this act, except that the mayor, recorder, aldermen and commonalty of the said city shall be commissioners of highways in and for the said city of Hudson.

Hudson a town within this act.

XXXIII. *And be it further enacted,* That all public acts relative to the highways in this state, except such acts as relate to the city and county of New-York, the city of Albany, and the counties of Suffolk, Queens, Kings and Richmond, shall be and hereby are repealed.

All public acts relative to highways, except in certain counties, repealed.

XXXIV. *And be it further enacted,* That the rivers formed by the outlets of Canandarqua, Seneca, Otsego and Cayuga lakes, and as much of the outlet of the Crooked-lake as is contained between the Seneca-lake and the lowest mill seat on the said outlet, and the rivers formed by the outlets of the Owaseo and Skaneateles lakes from their

Certain rivers declared public highways.

respective junctions with the Seneca-river to the first falls in each of the said rivers ; and the Nine-Mile-creek so called from its entrance into the Salt-lake to the north line of the town of Marcellus in the county of Onondaga ; and the outlet of the said Salt-lake and the inlet thereof from the head of the said lake unto the south line of the Onondaga-reservation ; and the Canaseraga and Chittenango creeks ; and the two branches of the said Chittenango-creek known by the names of Limestone and Butternut creeks until the first falls on each of the same ; and the Genesee-river from the great fall therein until its junction with the Canaseraga-creek ; and the said creek from its said junction to the southern boundary of township number seven in the seventh range in the county of Ontario ; and Mud-creek from the eastern boundary of township number twelve in the third range of townships in the said county of Ontario to its junction with the outlet of the Canandaguis-lake ; and the rivers Conbocton and Canisteo, the former from the mills built thereon adjoining the town of Bath, and the latter from a place known by the name of Big-Marsh, to their respective junctions with the river Tioga, and as much of the said river Tioga as is contained within this state ; and the west branch of the Chenango-river, from the north bounds of the town of Virgil as originally surveyed, to its junction with the east branch thereof, and thence down the same to its junction with the Susquehannah-river, and all such parts of the Susquehannah-river as are contained within this state ; and that part of the creek commonly called Wood-creek in the county of Washington, from Fort-Ann to the falls in the township of Whitehall ; and that part of Oneida-creek from the bridge over it near Oneida castle to the Oneida-lake, be and they are hereby declared to be public highways, except so much of the said waters as may be necessary for the owners of the adjoining land to build store houses and docks for the accommodation of boats ; *Provided*, The same shall not obstruct the navigation of the said waters.

Provido,

Penalty for obstructing the same.

The party offending also punishable by indictment.

XXXV. *And be it further enacted*, That if any person shall after the passing of this act dam up or obstruct the navigation of any of the before described waters, by erecting or building any mill or wier, or by the building or erecting thereon any other works, or by cutting or falling wood or timber in the same, every person so offending shall forfeit for each offence the sum of twenty-five dollars, to be recovered with costs of suit, by and for the use of any person who will sue for the same, before any justice of the peace in the county wherein such offence shall be committed ; and the person so offending shall moreover be deemed guilty of a misdemeanor, and be prosecuted accordingly by indictment or otherwise ; *Provided* never-

theless, That if any person erecting any mill or other works on either of the above described streams, shall cut or dig a sufficient canal or canals so that the navigation of the same be not injured by means of such works, such person shall not be liable to any of the penalties of this act; and it shall also be lawful for James Galloway, of the town of Palmyra in the county of Ontario, to erect a dam across Mud-creek in the said county, within the bounds of the township number twelve in the second range of townships, for the purpose of supplying a mill with water; but it shall be the duty of the said James Galloway, his heirs and assigns, to cause to be made on such dam a sufficient lock or canal to permit the passing of boats or rafts not less than twelve feet in width, and which all persons shall have the liberty of passing at all times free of expence, and also to keep the said lock or canal in good repair as long as the said dam shall be continued across the said creek; and if the said James Galloway, his heirs or assigns, shall unreasonably delay or hinder any person with rafts or boats from passing said lock or canal, he or they shall for every such offence forfeit and pay two dollars for every hour's detention, to be recovered with costs for the use of the person so delayed or hindered before any justice of the peace of the said county of Ontario; *And provided also*, That nothing in this act contained shall be construed to extend to or affect any mill or dam for the use thereof, that may have been erected, or the building thereof commenced on any of the said streams before the tenth day of August, one thousand seven hundred and ninety-eight.

Mills may be erected on making sufficient canals for navigation

James Galloway may erect a dam across Mud-creek on certain conditions.

Provide as to mills and dams heretofore erected.

Commissioners appointed relative to the bridge over the Schoharie creek at Fort Hunter.

XXXVI. *And be it further enacted*, That all the duties required to be done and performed by the superintendants of highways in and by the act, entitled *An act making provision to keep in repair the bridge over Schoharie-creek at Fort-Hunter in the county of Montgomery*, passed the first day of April, one thousand seven hundred and ninety-nine, shall after the passing of this act, devolve on and be done and performed by John T. Visscher, William Wemple and Barent Martin, who are hereby constituted and appointed commissioners for the purpose aforesaid; and if any vacancy shall by any means whatsoever hereafter happen in the said board of commissioners, that then and in such case it shall be and is hereby made the duty of the board of supervisors of the said county, at their first meeting after such vacancy shall happen and upon due notice thereof, to appoint some suitable and proper person to fill such vacancy.

XXXVII. *And be it further enacted*, That all the monies which by the act, entitled *An act for opening and improving certain great roads within this state*, passed the twenty-eighth day of March, one thousand seven hundred and

Certain monies to be paid to the supervisors.

ninety-seven, are directed to be paid into the hands of the superintendants of highways, shall be and hereby are directed to be paid to the supervisors of the several and respective counties in the said act mentioned, to be by them applied and laid out for the purposes directed in and by the said act.

Private road
in Rockland
county how
kept in repair.

XXXVIII. *And be it further enacted*, That the commissioners of highways in Orange-Town in the county of Rockland, or a majority of them, are hereby authorized and required to keep in repair hereafter the private road, swinging gates, fences and bridges on the south side of and near the Slocum-creek in the said town, and in case the expenses thereof to be borne by such of the proprietors of that part of the salt meadow which lies on the southerly side of the said creek, as shall use said road and bridges, according to the value of their respective lots or shares therein, by a tax to be levied, assessed, collected and paid in the same manner as is directed by the *Act for defraying the public and necessary charges in the respective counties of this state*; *Provided always*, That the said commissioners shall have their accounts audited and allowed by the supervisors of said county.

Proviso.

Bridge over
the Ramapough
creek in
Rockland
county how
kept in repair.

XXXIX. *And be it further enacted*, That the bridge over the Ramapough-creek in the town of New-Hempstead in the county of Rockland, near the house now or late of Lewis Shuert in the Clove, and the road called the Short Clove road near Haverstraw landing, shall hereafter be kept in repair by tax on the freeholders and inhabitants of the towns of New-Hempstead, Clark's Town and Haverstraw in the said county of Rockland; and the commissioners of the said three towns are hereby directed and required to cause the aforesaid bridge and road to be kept in repair, and an account of the expense attending the same shall be transmitted to the supervisors of the county at their meeting on the last Tuesday in May in every year, who are to audit, examine and liquidate the same, and divide the whole amount of the expenses so liquidated between the said three towns, in the same proportion as the other contingent charges of the county are appointed, and cause the same to be levied and collected from the freeholders and inhabitants of the said three towns respectively, and paid to the county treasurer in like manner as the other contingent charges of the county are raised and paid; and the said treasurer is hereby directed and required from time to time to pay the said monies to the said commissioners of the said towns respectively, on their producing an order or orders from the supervisors as is usual in other cases.

Swinging
gates over
Slocum low-
lands how

XL. *And be it further enacted*, That the commissioners of highways of the town of Kingston in the county of Ulster, or the major part of them, shall cause to be tressed

and kept, at the expence of the said town, such swinging gates on the common road across the Esopus low lands to the bridge erected over the Esopus-creek, as they shall judge proper; and every person who shall open and leave open the said swinging gates, or either of them, shall be liable for each offence to the penalty of one dollar, to be recovered with costs of suit before any justice of the peace in the said county of Ulster by any person who will sue for the same, and the monies arising therefrom shall be applied towards repairing such swinging gates, or to such other objects as the corporation of the said town of Kingston may deem meet.

maintained, and penalty for leaving them open

XLII. *And be it further enacted*, That the superintendants of highways heretofore appointed by virtue of the act, entitled *An act to regulate highways*, passed the twenty-first day of March, one thousand seven hundred and ninety-seven, shall be and they are hereby directed and required to account with the supervisors of the respective counties in which they were appointed superintendants, in the same manner as if this act had not been passed.

Superintendants to account with the supervisors.

XLIII. *And be it further enacted*, That all new waggons to be built in any part of the state shall be so constructed as that when the wheels are placed upon the axletrees, the outside of the fellows of the two wheels on the same axletree shall not be less than five feet asunder; and if the owner of any waggon built after the first day of September, one thousand seven hundred and ninety-seven, and not made conformable to the directions aforesaid, shall travel with such waggon or suffer any other person to travel therewith on any public highway, such owner being an inhabitant of this state, shall forfeit one dollar for every day he shall so use such waggon upon the public highway, to be recovered and applied in like manner as penalties for obstructing the public road are by this act directed to be recovered and applied.

Width of waggons regulated.

C H A P. CLXXXVII.

An ACT concerning Quit Rents.

Passed 8th April, 1801.

I. **B**E it enacted by the People of the State of New-York, represented in Senate and Assembly, That all quit rents shall be paid in the current money of this state, and that where any quit rents shall have been reserved in sterling money, the same shall be computed at the rate of four dollars thirty-seven and an half cents for one pound sterling, and where any quit rents shall have been reserved in proclamation money, the same shall be computed as current money of this state, and where any quit rents shall have been reserved in kind, and the value thereof not ascertained in money, the same shall be estimated as they

All quit rents to be paid in current money.

And value thereof how to be ascertained.

appear to be charged in the accounts of the receiver general of the late colony now state of New-York, and if the same shall not appear therein, or such accounts cannot be found, it shall be lawful for the comptroller of this state to settle the amount of such quit rents as to him shall appear to be equitable.

Quit rents during a certain period remitted to citizens of the U. States.

And on forfeited estates remitted.

Arrears of quit rent on certain farms remitted.

Exception.

Provided the owner commute for the same at a certain rate and within a limited time.

How persons claiming such remission shall proceed to obtain the same.

II. *And be it further enacted*, That all quit rents which accrued between the twenty-ninth day of September, in the year one thousand seven hundred and seventy-five, and the twenty-ninth day of September, in the year one thousand seven hundred and eighty-three, and which are due from citizens of this state or of the United States, shall be and hereby are remitted; and that no purchaser of any lands heretofore forfeited to the people of this state, and claiming under the said people by virtue of such forfeiture, shall be liable to pay any quit rents for the same, but such quit rents and all arrearages thereof are hereby also remitted.

III. *And be it further enacted*, That all arrears of quit rents upon any farm not exceeding one hundred and fifty acres, whereon no settlement or improvement was made before the first day of January, in the year one thousand seven hundred and eighty-four, and which has since that time and before the first day of April, in the year one thousand seven hundred and ninety-eight, been *bona fide* purchased and actually settled and improved, shall be and hereby are also remitted, except such part thereof as the vendor is bound or has agreed to pay; *Provided*, That the owner of such farm shall on or before the first day of April, which will be in the year one thousand eight hundred and two, commute for the quit rent charged thereon by paying one dollar and seventy-five cents for every twelve and an half cents of the said quit rent, and for that purpose every person claiming such remission, shall produce to the comptroller a map and description of the land for which the same is claimed, and the original deed or contract of sale for the same, or in case such contract shall have been satisfied or cancelled by any deed or conveyance made subsequent to the said fifth day of April, in the year one thousand seven hundred and ninety-eight, then such person shall produce to the comptroller satisfactory evidence that such contract of sale existed before that day, and subsequent to the said first day of January, in the year one thousand seven hundred and eighty-four; and the comptroller shall thereupon certify to the treasurer the sum due on such farm for commutation, and the treasurer's receipt for the same on such certificate, when countersigned by the comptroller, shall be a discharge of all future quit rents thereon; and in case any such farm shall exceed one hundred and fifty acres, and not exceed three hundred acres, then the owner thereof shall cause to

be designated on the said map one hundred and fifty acres thereof, upon which he will pay the commutation as aforesaid, and the residue thereof shall be liable to the quit rent charged thereon and all arrears thereof; but nothing in this section contained shall extend to any farm exceeding three hundred acres, nor to any land on which a remission of quit rent hath already been obtained by virtue of any former law of this state.

IV. *And be it further enacted,* That it shall be lawful for any persons who now are or hereafter may be seized of any lands, tenements or hereditaments, as contained in any original grant for the same, charged with an annual quit rent to commute for the same by paying to the treasurer of this state for the use of this state one dollar and fifty cents for every twelve and an half cents of such annual quit rent, either in money or in any of the stock created under the authority of the United States of America at the nominal value thereof; and the treasurer shall give the person making such payment a receipt or certificate, expressing the sum paid and the annual quit rent in lieu or discharge of which the same is paid, and describing the lands, tenements or hereditaments on which the same annual quit rent was charged, and the date of the grant reserving the same, which receipt or certificate shall be produced by the person making such payment to the comptroller, who shall countersign and then enter the same in a book to be kept in his office; and the said receipt or certificate being so countersigned and entered, or the entry thereof, shall be a good discharge of such quit rent for ever.

How persons seized of any lands charged with quit rent may commute for the same and obtain a discharge thereof.

V. *And be it further enacted,* That where any tract of land chargeable with quit rent was originally granted to several persons, and shall have been divided into as many shares as there were originally proprietors in the grant, and where the quit rent reserved by any grant or patent of any tract of land is according to the quantity, or by the acre, it shall be lawful for the owners or proprietors of any such share or divided part, to commute for the quit rent thereof in manner aforesaid, and also to pay the arrears of quit rent which may be due thereon; but no person shall be permitted to commute for the quit rent on any patent or on any part thereof, without first paying the arrears of quit rent then due thereon.

When the shares of original patentees have been divided or where the quit rent is reserved by the acre, any one of the owners may commute as aforesaid.

But no person shall commute without paying arrears.

VI. *And be it further enacted,* That where there are or may be several owners or proprietors of any tract of land chargeable with quit rents, whether the same is or shall be situated in one town or in several towns or counties, it shall be lawful for any three or more of such owners or proprietors, whenever there shall be more than one year's quit rent due on such tract, to put up an advertisement at some public place on the said land, notifying and requiring all the owners and proprietors of lands in such

Where there are several owners of any tract charged with quit rent, now the same to be equally affected and levied.

patent chargeable with quit rents, to meet at a certain time and place therein to be specified, not less than twenty nor more than forty days from the time of setting up such advertisement, to raise and pay the arrears of quit rent then due for such tract; and such of the owners and proprietors of the said land chargeable with quit rent as shall then meet, may proceed to choose by plurality of voices two assessors and one collector for the purpose; and the assessors so chosen shall procure from the comptroller of this state an account of the arrears of quit rent due for such patent, with an account of the charges of advertisement, if any, and an account of the quantity of land in such patent, if any, on which the quit rent is remitted or discharged by commutation, and shall then proceed to make an assessment roll, containing the names of the owners or proprietors of the land in the said patent chargeable with quit rent, and the quantity of land to which he or she is entitled, and the sum with which each of them is respectively chargeable of such arrears, according to the quantity of acres which every such person may be entitled to in the same patent or tract, with an addition of six per cent for charges, and mentioning the quantity of land, if any, in such patent sold by the commissioners of forfeitures, which is not chargeable with quit rent, and subscribe their names to the said assessment roll and annex the account received from the comptroller to it, and within sixty days from the time they were chosen deliver the same to the collector so chosen as aforesaid, who shall collect from the respective persons named in such assessment roll, the several sums they shall be respectively charged with, in the same manner as the collectors of public taxes are or shall be empowered to do by law, and shall within six months after he receives such assessment roll, pay the sums by him received or collected thereon for quit rents to the treasurer of this state, and deliver the said assessment roll to the treasurer with a certificate thereon signed by such collector, if the whole sum therein mentioned is not paid, setting forth which of the persons therein named are delinquents, and the reason the sums they are respectively charged with could not be levied; and such collector shall also pay one per cent of such part of the six per cent so added as aforesaid as he shall collect, to the assessors for their trouble, and retain the residue as a compensation for his services; and the treasurer shall deliver such assessment roll to the comptroller, in order that the patent may be credited with the sum paid for quit rent, and proper measures taken to compel payment of the arrears from the delinquents.

Compensation
to the assessors
and collector.

Patent to be
credited with
the sum so
collected and
paid.

Comptroller
may appoint *

VII. *And be it further enacted, That it shall be lawful for the comptroller of this state from time to time, by*

warrant under his hand and seal of office, to appoint and authorise any proper person to distrain for the quit rent due or hereafter to become due, upon any divided part of any grant or patent, or any tract or parcel of any land contained therein ; and every such person so appointed shall be considered as the proper officer for that purpose ; but no distress shall be made by virtue of this act upon any lot or divided part of any tract of land for any arrears of quit rent due for any other part of the said patent or tract of land.

person to distrain for quit rent due on any divided tract.

VIII. *And be it further enacted,* That whenever there shall be three years quit rent due upon any grant or patent for lands in this state, or upon any lands contained in such grant or patent, it shall be lawful for the comptroller of this state and he is hereby required to give notice in two or more of the public newspapers printed in this state, which notice shall be so continued for three months at the least, that if the owners, or proprietors of such lands do not, within twelve months after the date of such notice, pay the arrears of quit rent due for such lands, with the charge of such notices, to the treasurer of this state, then so much of the said lands will be sold at public vendue as will pay the same, with the charges of such notices and sale ; and such notice shall express to whom the grant or patent was originally made, the date thereof, and the sum due thereby to the last day of payment preceding such notice, as far as the same does appear from accounts of quit rents in the books of the said late receiver general, or the accounts of the said treasurer ; and upon the failure of payment of the said quit rent and charges of such notices, it shall be lawful for the comptroller of this state and he is hereby required to apply to the junior justice of the supreme court, who is hereby authorised and required as justice of the court of exchequer, to cause an advertisement to be published in the newspaper printed by the printer to this state, and in one of the public newspapers printed in the city of New-York, notifying all persons interested in such lands to appear before him, on such day and at such place as he shall therein appoint, not less than thirty nor more than forty days thereafter, to show cause, if any they have, why so much of the said lands should not be sold as will satisfy and pay the said quit rent, with the charge of such notices ; and in case no person shall appear at the time and place so appointed, either in person or by attorney, or if any person shall appear at such time and place, the said justice shall hear the parties so appearing in a summary way, and shall thereupon certify under his hand the sum due for quit rent on the said lands, together with the charges of the said notices and the process to issue thereon, and shall then issue process under his seal in the name of the people of this state, tested in

When three years quit rent are due comptroller to give notice that if arrears are not paid in a certain time the lands will be sold.

On failure of payment how to proceed.

Duty of the junior justice of the supreme court.

the name of such justice, and on the day of the date of such certificate, directed to the sheriff of the county where the said lands lie, or if such lands lie in several counties, then to the sheriff of either of the said counties, commanding such sheriff within sixty days after the tesse of such process, to sell at public vendue to the highest bidder, so much of the said lands as will pay the sum so certified to be due for quit rent and charges as aforesaid, and the further incidental charges thereon, and to pay the same monies so certified to be due for quit rent and charges to the treasurer of this state within sixty days after such sale; and every such sheriff to whom any such process shall be directed, is hereby empowered and required, within six days after the receipt of such process, to cause advertisements to be affixed on the court house of the county and at three or more of the most public places in the county where the lands lie, or if the same lie in different counties, then at the court houses of and at three of the most public places in each of the said counties, that on such day or days, which shall not exceed fifty nor be less than thirty days after the date of such advertisement, so much of the said lands will be sold at public vendue, at the court house of the county in which such lands shall be situated, to the highest bidder, as will pay the sum mentioned in such process, together with the charges of advertisement, sale, survey, if required, and conveyance thereof; and such sales shall be made according to such advertisements, and between the hours of nine in the forenoon and two in the afternoon of the days appointed for that purpose, and at the time of such sale such person as will accept the least quantity of land to pay the sum mentioned in such process, together with the said charges, of which such sheriff shall then make a true account as far as he can ascertain the same, shall be deemed the highest bidder; and on every sale such sheriff shall make and execute to the purchaser sufficient deeds or conveyances, which shall be valid both in law and equity, whether such sale be made in the proper county of such sheriff or in any other county as aforesaid; and shall vest in such purchaser, his heirs and assigns, an estate in fee simple in the premises so sold; *Provided always*, That such sheriff before executing such deeds or conveyances shall cause the land so sold to be surveyed, except in cases where the quit rent on undivided parts of any tract or on particular lots thereof, shall have been paid or discharged by commutation or otherwise, in which cases such sheriff may sell and convey as aforesaid any proportion of the other undivided parts of such tract, or of the remaining lots thereof on which the quit rent shall not have been so paid or discharged, without causing any survey thereof to be made; and in cases where such survey shall be re-

*Duty of the
sheriff.*

*Conveyance
by him to be
valid.*

*Lands sold to
be surveyed
and laid out
in one piece,
except, &c.*

expired as aforesaid, the lands so sold and surveyed shall be laid out in one entire piece, and at one side or end of the tract out of which the same shall be sold, and shall always be of the unimproved land, if there be sufficient for that purpose in any one piece; And further, That if there be no court house in any county at the time of such advertisement and sale, the advertisement shall be fixed up and the sale be made at the place where the then last court of common pleas for such county was held.

IX. *And be it further enacted,* That in every case where such process shall be issued by virtue of this act, the same shall be recorded in the office of the secretary of this state, and such process, or the record thereof, shall be conclusive proof that the previous notices required by this act had been duly given and published, and that all proceedings previous to the issuing thereof were regular and according to law.

Process to be recorded and to be conclusive proof of previous proceedings.

X. *And be it further enacted,* That every sheriff to whom any such process shall be delivered, shall before he proceeds to execute the same, take an oath, to be administered to him in the words following, to wit:

Sheriff to take an oath.

"You shall well, truly, faithfully and honestly discharge the trust reposed in you by virtue of an act, entitled An act concerning quit rents, according to the best of your skill and understanding:"

Which oath any justice of the peace is hereby authorized and required to administer, and to give a certificate thereof to the said sheriff, who shall file the same with the clerk of the county of which he shall be sheriff, and in which the lands lie.

To be filed with the clerk of the county.

XI. *And be it further enacted,* That every such sheriff shall within sixty days after such sale, pay to the treasurer of this state the sum mentioned in such process, and it shall be lawful for such sheriff to retain for his services and the charges attending such sale, such sum as the judge of the court of exchequer, either in the term or vacation of the said court, shall allow for the same and certify under his hand to be due therefor to such sheriff, and he shall return the surplus money, if any, to the persons to whom the lands so sold belonged immediately before such sale, and if they cannot be found, then such sheriff shall pay the same to the said treasurer, who is hereby required to apply the same, as the comptroller shall direct, to the payment of the quit rents due or which shall thereafter become due from such persons, and the said sheriff shall at the same time deliver to the comptroller a full and just account of the monies arising from such sale and of the application of the same.

Sheriff to pay the sum due for quit rent to the treasurer.

How to dispose of the surplus.

And account to the comptroller.

XII. *And be it further enacted,* That if it shall appear to the comptroller that any payments of quit rents or certificates given for the remission of quit rent in pursu-

Mistakes relative to any payment of quit rent, &c.

to be rectified
by the comp-
troller.

ance of any former law of this state; shall have been credited by mistake to the wrong patent or lot, or that such certificates, although duly obtained, have not been delivered to the late auditor, or on account of any mistakes therein as to the date of the patent, the names of the patentees, or the number of the lots, have not been entered by the said auditor, it shall be the duty of the comptroller on discovering the same to rectify all such mistakes, and to receive all such certificates not delivered as aforesaid and to file and enter the same, and also such other certificates as have not been so entered as aforesaid, which shall be as effectual as if the same had been entered in due time by the said auditor; and that no credit so given by mistake shall operate to discharge any lands from the quit rents justly due thereon.

Payments by
mistake in
other cases to
be also recti-
fied.

XIII. *And be it further enacted*, That it shall be lawful for the comptroller whenever payments have or shall be made for quit rents or commutation by mistake, to rectify such mistakes and to draw his warrants on the treasurer for any sums of money which shall appear to have been overpaid.

Comptroller
to draw war-
rants to de-
fray the ex-
pences attend-
ing this act.

XIV. *And be it further enacted*, That it shall be lawful for the comptroller to draw warrants on the treasurer to defray the expences attending the execution of this act.

Statute of lim-
itations when
to apply to
quit rents.

XV. *And be it further enacted*, That the act, entitled *An act for the limitation of criminal prosecutions and of actions at law*, shall not take effect or be in force as to quit rents, or any proceeding for the recovery of the arrears thereof, until the first day of January, which will be in the year of our Lord one thousand eight hundred and ten.

C H A P. CLXXXVIII.

An ACT concerning Slaves and Servants.

Passed 8th April, 1801.

Who shall be
slaves.

I. **B**E it enacted by the People of the State of New-York, represented in Senate and Assembly, That every negro, mulatto or mestee within this state, who is now a slave for life, shall continue such, unless such slave shall be manumitted according to law; and that the baptizing of any slave shall not be deemed to be a manumission of such slave.

Baptism no
manumission.

How any own-
er may manu-
mit his slave.

II. *And be it further enacted*, That it shall be lawful for the owner of any slave to manumit such slave by last will or testament, or by any certificate or writing for that purpose; but if such slave at the time of such manumission be above the age of fifty years, or within that age and not of sufficient ability to provide for his or her support, the owner of such slave, and the heirs, executors, administra-

When liable
for the main-
tenance of
such slave.

TWENTY-FOURTH. SESSION.

419

ors and assigns of such owner shall respectively be liable for the maintenance of such slave, in case such slave shall become a charge to any city or town within this state; and the overseers of the poor of any such city or town, shall and may from time to time recover the amount of the monies expended for the maintenance of such slave from such owner, his heirs, executors, administrators or assigns, by action of debt or by information, in any court having cognizance thereof; *Provided however,* That if the owner of such slave at or immediately before the time of such manumission shall obtain a certificate, signed by the overseers of the poor of the city or town where such owner shall reside, or the major part of them, or if in the cities of New-York or Albany by the mayor and recorder of the said cities respectively, certifying that such slave appears to be under the age of fifty years, and of sufficient ability to provide for himself or herself, and shall cause such certificate to be registered in the office of the clerk of such city or town, such certificate or the registry thereof shall be conclusive evidence of the facts therein contained, and forever exonerate such owner and his representatives from the maintenance of such slave; and in case of the refusal of such overseers, or of the said mayor and recorder, to grant such certificate, such owner may apply for the same to the court of general sessions of the peace of the city or county in which such owner shall reside, giving ten days notice of such application to the said overseers, or mayor and recorder, and if such certificate be granted by such court, the same shall be as effectual as if signed by such overseers or mayor and recorder; and it is hereby made the duty of such overseers, mayor and recorder, and court, to grant or refuse such certificate according to the truth of the case.

How he may be sued.

When and how he may discharge himself from such liability.

Duty of certain officers and courts in the premises.

III. *And be it further enacted,* That all the manumissions of slaves made by the people called Quakers and others, before the ninth day of March, in the year of our Lord one thousand seven hundred and ninety-eight, although not in strict conformity to the statutes then in force relating to such manumissions, shall be valid from the time the same were made; *Provided,* That every owner of any slave so manumitted, and the heirs, executors, administrators and assigns of such owner, shall be liable for the maintenance of such slave, in case such slave hath or shall become a charge to any city or town within this state, and from time to time be subject to suits by the overseers of the poor for monies expended by any such city or town, in the same manner as is provided in the preceding section of this act.

Certain manumissions of slaves made by Quakers confirmed.

Provide.

IV. *And be it further enacted,* That no slave shall hereafter be imported or brought into this state, unless the person importing or bringing such slave shall be coming into

No slave imported or brought into this state ex-

cept in certain
cases and sub-
ject to certain
regulations.

this state with intent to reside permanently therein, and shall have resided without this state, and also have owned such slave at least during one year next preceding the importing or bringing in of such slave ; *And further*, That every person importing or bringing any such slave into this state, shall within one year thereafter, make oath or affirmation before a judge, mayor, recorder, alderman or justice of the peace, that such person hath resided out of this state during one year next preceding the importing or bringing of such slave into this state, and that during the same year such slave hath been the property of such person ; and a certificate signed by the judge, mayor, recorder, alderman or justice before whom the said oath or affirmation shall have been made, certifying that the said oath or affirmation hath been made by the person importing such slave, shall within one month after the making thereof be filed in the office of the clerk of the city or county wherein the person importing such slave shall reside ; and if any person whatsoever shall bring or import into this state any slave contrary to the true intent and meaning of this act, or being permitted by this act to import and bring such slave into this state, shall neglect to make such oath and file such certificate as aforesaid, then every such slave shall be free.

Every slave
otherwise
brought in
shall be free.

Penalty on
persons selling
or transfer-
ring slaves
brought into
this state.

V. *And be it further enacted*, That if any person whatsoever within this state, shall under any colour or pretext whatever, sell as a slave or transfer for any period whatever any person who shall hereafter be imported or brought into this state as a slave, every person so selling or transferring such slave, and his or her factor or agent making such sale or transferring, shall be deemed guilty of a public offence, and shall for every such offence forfeit the sum of two hundred and fifty dollars, to be recovered with costs of suit by any person who will sue for the same, by action of debt in any court of record having cognizance thereof, the one half of which forfeiture shall be paid to the treasurer of this state for the use of the people thereof and the other half to the person who shall sue for the same to effect ; *And further*, That every person so imported or brought into this state and sold contrary to the true intent and meaning of this act shall be free.

How recover-
ed.

And such slave
to be free.

Any person
exporting or
attempting to
export a slave
subject to the
like penalty.

VI. *And be it further enacted*, That if any person shall export or attempt to export any slave, or any servant born of a slave and made free by virtue of this act, to any place without this state, except as is hereinafter provided, every person so exporting or attempting to export such slave or servant, and every person aiding or consenting to such exportation or attempt to export, shall be deemed guilty of a public offence, and shall for every such offence forfeit the sum of two hundred and fifty dollars, to be recovered and paid in like manner as the forfeiture mentioned in

To be recover-
ed in like
manner.

the last preceding section is directed to be recovered and paid; and the slave or servant so exported or attempted to be exported shall be free.

And the slave to be free.

VII. *And be it further enacted*, That it shall be lawful for any person, not an inhabitant of this state, who shall be travelling to or from, or passing through this state, to bring with him any slave, and take such slave with him from this state; and it shall also be lawful for any inhabitant of this state, going a journey to any other part of the United States, to carry with him or her any such slave or servant as aforesaid; but such inhabitant shall bring back every such slave or servant, and in default thereof shall be deemed to have committed a public offence, and to have incurred the forfeiture last aforesaid, unless he or she shall within six months after his or her return, make proof by his or her own oath, or otherwise, to the satisfaction of a judge, mayor or recorder of the city or county wherein he or she shall reside, that every such slave or servant, not brought back as aforesaid, could not be brought back by reason of some unavoidable accident, and unless such person shall forthwith file a certificate of having made proof as aforesaid, signed by the magistrate before whom such proof hath been made, in the office of the clerk of the city or town in which he or she shall reside; and it shall also be lawful for every person who shall have resided one year within this state and who shall be about to remove permanently therefrom, to carry with him or her every such slave as shall have been the property of such person during one year then next preceding; *Provided*, That before such person shall carry away such slave out of this state, he or she shall make satisfactory proof before a judge of the court of common pleas, or a mayor or recorder of the city or county in which he or she last resided, that he or she hath resided within this state during one year then next preceding, and that such slave hath been his or her property during the same year, and shall obtain from such judge, mayor or recorder a licence to carry out of the state such slave; and every master of a vessel who shall receive on board his vessel for the purpose of carrying out of this state any slave for whose exportation such licence as aforesaid hath not been obtained, shall be deemed guilty of a public offence, and for every such offence shall forfeit the sum of two hundred and fifty dollars for every slave so received on board, to be recovered and paid in like manner as the forfeiture last before mentioned is directed to be recovered and paid.

Non-residents may travel to and from this state with slaves.

Citizens of this state may take any slaves or servants out of the state on a journey, but shall bring back the same under a penalty, except in case of unavoidable necessity.

Persons removing from this state may take with them slaves owned during one year before.

Provided proof of such ownership be previously made.

Masters of vessels receiving slaves on board for exportation contrary to this act to forfeit a penalty.

To be recovered in like manner.

VIII. *And be it further enacted*, That every child born of a slave within this state after the fourth day of July, in the year of our Lord one thousand seven hundred and ninety-nine, shall be free, but shall remain the servant of the owner of his or her mother, and the executors or

Every child born of a slave after a certain date to be free. But shall continue as a slave.

want till a certain age. administrators of such owner, in the same manner as if such child had been bound to service by the overseers of the poor, and shall continue in such service, if a male, until the age of twenty-eight years, and if a female until the age of twenty-five years.

The person entitled to such service to cause the name, age and sex of such child to be registered.

Penalties for neglect how recovered and applied.

IX. *And be it further enacted,* That every person being an inhabitant of this state, who shall be entitled to the service of a child born after the said fourth day of July, shall within nine months after the birth of such child, cause to be delivered to the clerk of the city or town whereof such person shall be an inhabitant, a certificate in writing containing the name and addition of such person, and the name, age and sex of the child so born, which certificate, whether the same be delivered before or after the said nine months, shall be by the said clerk recorded in a book to be by him for that purpose provided, and such record thereof shall be good evidence of the age of such child; and the clerk of such city or town shall receive from said person twelve cents for every child so registered; and if any person shall neglect to deliver such certificate to the said clerk within the said nine months, such person shall forfeit and pay for every such offence five dollars, and the further sum of one dollar for every month such person shall neglect to deliver the same, to be sued for and recovered by the clerk of the city or town in which such person shall reside, the one half to the use of such clerk and the residue for the use of the poor of such city or town.

Such person may elect to abandon the right to such service and in what manner.

How such child shall be maintained and may be bound out.

X. *And be it further enacted,* That the person entitled to the service of any child born as aforesaid, may nevertheless within one year after its birth, elect to abandon such right, in which case a notification of such abandonment, under the hand of such person, shall be filed with the clerk of the city or town in which such person shall reside, but every child so abandoned, shall be maintained by such person until it arrive to the age of one year, and thereafter shall be considered as a pauper of such city or town, and liable to be bound out by the overseers of the poor in the same manner as the children of paupers in other cases, and such child, while such pauper and until it shall be so bound out, shall be maintained by the overseers of the poor of such city or town at the expence of this state, and for that purpose the comptroller is hereby required, from time to time, to draw his warrant on the treasurer in favour of such overseers for the amount of such expence, not exceeding the rate of three dollars per month; *Provided,* The accounts for the same be first certified and approved by the mayor of such city or the supervisor, and a majority of the justices of such town; and every person who shall omit to notify such abandonment as aforesaid, shall be considered as having elected to

Proviso.

retain the service of such child, and be liable for its maintenance until the period to which its servitude is limited as aforesaid.

XI. *And be it further enacted*, That all persons heretofore manumitted by this state, and formerly the slaves of persons whose estates have been confiscated or forfeited, and who were slaves at the time of such confiscation or forfeiture, and who then and since have resided and still reside within this state and are unable to support themselves, shall also in like manner be maintained as paupers by the overseers of the poor of the city or town in which they shall reside, at the expence of this state, and the accounts of the said overseers for such expence, being certified and approved by the mayor of such city or by the supervisor and a majority of the justices of such town, shall be paid in the manner directed in the preceding section of this act.

Certain poor persons formerly slaves, to be maintained by the state.

Expence thereof how paid.

XII. *And be it further enacted*, That if any person shall willingly suffer or permit his or her slave, or such servant as aforesaid, to beg of others victuals, cloathing or other necessaries, such person shall forfeit twenty-five dollars for every such offence, to be recovered by action of debt, with costs of suit in any court having cognizance thereof, by any person who will sue for the same, one half of which forfeiture shall be paid to the prosecutor, and the residue to the overseers of the poor of the city or town in which such offence shall be committed for the benefit of such poor.

Penalty on persons suffering their slaves or servants to beg.

XIII. *And be it further enacted*, That if any person shall by fraud or collusion, sell or pretend to sell or dispose of any aged or infirm slave to any person who is unable to maintain such slave, such sale or disposition shall be void and the person making the same shall forfeit the sum of fifty dollars for each offence, and shall moreover be deemed the owner of such slave within the meaning of the next preceding section of this act, and which forfeitures shall be recovered and applied as is directed in the said section.

Penalty on persons selling aged or infirm slaves to others unable to maintain them.

XIV. *And be it further enacted*, That if any person shall employ, harbour, conceal or entertain any slave or such servant as aforesaid, knowing such slave or servant to belong to any other person, without the consent of such owner, such person shall forfeit to the owner of such slave or servant the sum of twelve dollars and fifty cents for every twenty-four hours, and in that proportion for a greater or less time, while such slave or servant shall have been so employed, harboured, concealed or entertained; but such forfeiture shall not in the whole exceed the value of such slave, or of the service such owner is entitled to receive from such servant; *And further*, If any person shall be guilty of harbouring, entertaining or concealing,

Penalty on persons harbouring slaves or servants without consent of the owner.

or of assisting to convey away any such slave or servant, and such slave or servant be lost or die, such person shall forfeit to the owner of such slave or servant the value of such slave, or of the service such owner shall be entitled to receive from such servant; all of which forfeitures may be recovered by action of debt, with costs of suit in any court having cognizance thereof.

Penalty for trading with slaves or servants.

XV. *And be it further enacted*, That if any person shall trade or traffic with any such slave or servant, either in buying or selling without the consent of the owner of such slave, or the master or mistress of such servant, such person shall for every offence forfeit treble the value of the articles so bought or sold, and also the sum of twelve dollars and fifty cents to the owner of such slave or servant, to be recovered with costs against such person by action of debt, in any court having cognizance thereof, and every contract so made with such slave or servant shall be void.

Penalty for selling liquor to slaves or servants.

XVI. *And be it further enacted*, That if any person shall sell any rum, or other strong liquor to any such slave or servant, without the consent of the owner of such slave, or the master or mistress of such servant, such person shall forfeit for every such offence the sum of five dollars, to be recovered in the name of the owner of such slave or servant with costs, by action of debt, in any court having cognizance thereof, the one half of which forfeiture when recovered shall be paid by such owner to the overseers of the poor of the city or town where such offence shall be committed.

Owners of slaves or servants answerable for their trespasses to a certain amount.

XVII. *And be it further enacted*, That if any person shall by theft or trespass committed by any such slave or servant, sustain damage to the value of twelve dollars and fifty cents or under, the owner of such slave or the master or mistress of such servant shall be liable to make satisfaction for the same to the party injured, to be recovered by action of debt, with costs, in any court having cognizance thereof.

Slaves striking white persons how to be punished.

XVIII. *And be it further enacted*, That if any such slave shall strike a white person, it shall be lawful on proof of the same by the oath of such person for any justice of the peace to commit such slave to gaol, who shall thereupon be tried and punished as in cases of petit larceny according to the act, entitled *An act declaring the powers and duties of justices of the peace*; but in all other cases such slave shall have the privilege of trial by jury.

In other cases to have the benefit of trial by jury.

XIX. *And be it further enacted*, That no such slave shall be a witness in any case except for or against another slave in criminal cases.

Where slaves may be witnesses.

XX. *And be it further enacted*, That where any slave shall hereafter be convicted in the supreme court, or in any court of oyer and terminer and gaol delivery or general sessions of the peace, of any crime not punishable

Slaves convicted of certain offences may be transported.

with death, or with imprisonment in the state prison for life, it shall be lawful for the master or mistress of such slave to cause such slave to be transported out of this state; *Provided*, That the court before which such conviction may be had shall previously certify, that the crime whereof such slave shall be convicted is of such a nature that transportation would be a proper punishment; *And provided also*, That such court may also inflict such other punishment on such slave as from the nature of the offence and the course of the law they may judge proper.

On a certificate of the court approving the same.

Provided that other punishment may also be inflicted.

C H A P. CLXXXIX.

An ACT to repeal the Acts and Parts of Acts therein mentioned.

Passed 8th April, 1801.

BE it enacted by the People of the State of New-York, represented in Senate and Assembly, That the act, entitled *An act to authorise the person administering the government of this state for the time being to transmit copies of the laws of this state to the honorable the congress of the United States and to the executive authority of each of the said United States*, and the act, entitled *An act concerning appeals of felony*, and all the law concerning appeals of felony and mayhem, and all acts and parts of acts heretofore passed by the legislature of this state which come within the purview or operation of any of the acts passed during the present session of the legislature, commonly called the revised acts, shall be and the same are hereby repealed from and after the first day of October next; *Provided however*, That such repeal shall not affect any act done, right accrued, suit or prosecution commenced, or penalty, forfeiture, offence or crime incurred or committed previous to the said first day of October next; but every such act and right shall remain as valid, and every such suit or prosecution may lawfully proceed, and every such penalty, offence or crime be demanded, prosecuted, recovered or punished, as the case may be, as if all the acts and parts of acts hereby intended to be repealed had remained in full force; *And provided also*, That all acts and parts of acts which were repealed by any act hereby intended to be repealed, and which have not been re-enacted during the present session, shall continue to be so repealed; *And provided further*, That the said acts passed during the present session of the legislature, commonly called the revised acts, shall not take effect or be in force until the said first day of October next, any thing in the said acts contained to the contrary notwithstanding; *And provided further*, That the Act for the assessment and collection of taxes, the Act for defraying the public and necessary charges of the respective counties of this state, the Act to regulate

Certain acts repealed after the 1st day of October next

Provide.

Further provide.

Further provide.

Further provide recting certain acts which shall continue in force.

highways, the Act to provide against infectious and pestilential diseases, the Act for the inspection of pot and pearl ashes, the Act to regulate the culling of staves and heading, the Act for the inspection of lumber, the Act relative to the state prison, and the Act to regulate sales at public auction and to prevent stock-jobbing, passed at the present session, shall be and continue in full force, any thing in this act contained to the contrary notwithstanding.

C H A P. CXC.

An ACT for publishing the Laws of this State.

Passed 8th April, 1801.

James Kent
and Jacob
Radcliff au-
thorized to
cause to be
printed the
laws of this
State.

I. **B**E it enacted by the People of the State of New-York, represented in Senate and Assembly, That James Kent and Jacob Radcliff are hereby authorized and appointed to prepare for the press, and to cause to be printed in as many volumes and under such heads or divisions as they shall think proper, all the acts and parts of acts of the legislature of this state now in force, and including all those which may be passed during the present session ; that in doing this it shall be their duty to comprise, if possible, in one volume, all permanent acts of a public nature and affecting the community at large, and also, if in their opinion it shall be practicable and expedient, such acts of incorporation or of a local nature as are most useful to be generally known ; and they shall insert in the said work, and in a separate volume, the titles only of all obsolete and private acts, and of all acts of incorporation and of a partial or local nature, which shall not be comprehended in the said volume of public acts ; *Provided however,* That if it shall appear to them most proper or expedient, they may insert at length such acts of incorporation, and of a partial or local nature as they shall deem most useful to be generally known, in the said volume which shall contain the titles of the acts which are private or obsolete ; and the constitution of the United States of America and of this state shall be inserted in the first volume.

Proviso.

An index and
marginal
notes to be
made.

II. *And be it further enacted,* That the said James Kent and Jacob Radcliff shall make an index of the matter contained in the said work, and marginal notes, and shall correct all errors, if any be discovered, in the orthography of the laws, and in every respect complete the said work in a manner which to them shall appear best calculated to render the same the most generally useful ; and for this purpose they shall have free access to, and be permitted to examine any of the public records or papers of this state without fee or reward.

{RESIDUE OBSOLETE.}

C H A P. CXCI.

An ACT for the Payment of certain Officers of Government; and for other Purposes.

Passed 8th April, 1801.

X. **A**ND *be it further enacted*, That it shall be lawful for the treasurer of this state, upon the warrant of the comptroller, to pay to the judge of the court of probates, annually, the sum of two hundred and fifty dollars, to commence from the first day of July last.

Salary to the judge of probates.

[RESIDUE OBSOLETE.]

C H A P. CLII.

An ACT recommending a Convention for the Purposes therein mentioned.

Passed 6th April, 1801.

WHEREAS certain articles of the constitution are of doubtful construction, or have been found inconvenient in practice; Therefore.

Preamble.

I. *Be it enacted by the People of the State of New-York, represented in Senate and Assembly*, That it shall and may be lawful, and it is hereby proposed to the citizens of this state to elect, by ballot, delegates to meet in convention, for the purpose of considering the parts of the constitution of this state respecting the number of senators and members of assembly in this state, and with power to reduce and limit the number of them as the said convention may deem proper, and also for the purpose of considering and determining the true construction of the twenty-third article of the constitution of this state relative to the right of nomination to office, but with no other power or authority whatsoever.

Proposition to the citizens of this state to elect delegates to meet in convention.

VI. *And be it further enacted*, That the delegates so to be chosen shall meet in convention at the court house in the city of Albany, on the second Tuesday of October next.

When and where to meet.

VIII. *And be it further enacted*, That the proceedings of the said convention shall be filed in the office of the secretary of this state; and the determination of the said convention respecting the several matters herein before mentioned shall be entered of record in one of the books of record in the same office, and such determination shall thereupon become and be considered as part of the constitution of this state.

Proceedings to be filed in the secretary's office.

[RESIDUE OBSOLETE.]

Amendments
 TO THE
CONSTITUTION
 OF THE
State of New-York.

In Convention of the Delegates of the State of
NEW-YORK.

ALBANY, October 27, 1801.

WHEREAS the legislature of this state, by their act passed the sixth day of April last, did propose to the citizens of this state to elect by ballot delegates to meet in convention, “ for the purpose of considering the “ parts of the constitution of this state respecting the num- “ ber of senators and members of assembly in this state, “ and with power to reduce and limit the number of them “ as the said convention might deem proper: and also, “ for the purpose of considering and determining the true “ construction of the twenty-third article of the constitu- “ tion of this state, relative to the right of nomination to “ office :—

And whereas the people of this state have elected the members of this convention for the purposes above expressed ; and this convention having maturely considered the subjects thus submitted to their determination, do, in the name and by the authority of the people of this state,
ORDAIN, DETERMINE AND DECLARE :

Assembly,
number there-
of limited.

I. That the number of the members of the Assembly hereafter to be elected shall be one hundred, and shall never exceed one hundred and fifty.

Legislature to
apportion the
members.

II. That the legislature at their next session shall apportion the said one hundred members of the assembly among the several counties of this state, as nearly as may be, according to the number of electors which shall be found to be in each county by the census directed to be taken in the present year.

Senators,
their perma-
nent number.

III. That from the first Monday in July next, the number of the senators shall be permanently thirty-two, and that the present number of senators shall be reduced to thirty-two in the following manner, that is to say : The seats of the eleven senators composing the first class, whose time of service will expire on the first Monday in July

next, shall not be filled up; and out of the second class the seats of one senator from the middle district and of one senator from the southern district shall be vacated by the senators of those districts belonging to that class casting lots among themselves; out of the third class, the seats of two senators from the middle district, and of one senator from the eastern district, shall be vacated in the same manner; out of the fourth class, the seats of one senator from the middle district, of one senator from the eastern district, and of one senator from the western district, shall be vacated in the same manner; and if any of the said classes shall neglect to cast lots, the senate shall in such case proceed to cast lots for such class or classes so neglecting. And that eight senators shall be chosen at the next election in such districts as the legislature shall direct, for the purpose of apportioning the whole number of senators amongst the four great districts of this state, as nearly as may be, according to the number of electors qualified to vote for senators, which shall be found to be in each of the said districts by the census above mentioned; which eight senators so to be chosen shall form the first class.

IV. That from the first Monday in July next, and on the return of every census thereafter, the number of the assembly shall be increased at the rate of two members for every year, until the whole number shall amount to one hundred and fifty; and that upon the return of every such census, the legislature shall apportion the senators and members of the assembly amongst the great districts and counties of this state, as nearly as may be, according to the number of their respective electors; *Provided*, That the legislature shall not be prohibited by any thing herein contained, from allowing one member of assembly to each county heretofore erected within this state.

Assembly how to increase.

V. And this convention do further, in the name and by the authority of the people of this state, ORDAIN, DETERMINE AND DECLARE, That by the true construction of the twenty-third article of the constitution of this state, the right to nominate all officers other than those who by the constitution are directed to be otherwise appointed, is vested concurrently in the person administering the government of this state for the time being and in each of the members of the council of appointment.

Nomination to office.

By order,

A. BURR, Prest.

of the Convention, and Delegate
from Orange county.

Attest,

JAMES VAN INGEN, }
JOSEPH CONSTANT, } Secretaries.



I N D E X
 TO THE
FIRST VOLUME
 OF THE
L A W S OF NEW-YORK.

A B A T E M E N T,

Writ to abate where sheriff is named disseisor by collusion,	85
Not to abate by non-tenure of parcel,	89
Suits at law not to abate by death in certain cases,	351, 537
Nor in chancery,	440
Truth of plea in abatement to be sworn to,	357

A B J U R A T I O N,

Oath of by persons naturalised,	18
.By electors,	370

A B S C O N D I N G and absent debtors—

See Debtors absconding or absent.

A C C E S S A R I E S,

When to be outlawed,	247
To felonies after the fact how punished,	254, 5
Proceedings against an accessory in one county to a crime committed in another,	260
Liable although the principal be pardoned,	260, 1

A C C O U N T,

Action of and proceedings therein,	94
By joint tenants and tenants in common,	95
Auditors therein and their duty,	ibid.
By and against executors and administrators,	536
Money of	250
Judgments and decrees to be rendered therein,	ibid.

A C T I O N S.

Proceedings in assise and other possessory real actions,	80—92
Will not lie on certain contracts unless in writing,	79, 80

A D D I T I O N S

Of the defendants place and degree when required,	247
---	-----

A D M I N I S T R A T I O N,

How and to whom to be granted,	318
When to the chamberlain of New-York,	321, 2

ADMINISTRATORS,

Of tenants in fee on for life may sue or distrain for arrears of rent,	139, 140
How and when to account for and pay the unclaimed surplus of personal estates,	310, 541
To give bond with sureties,	319, 320
By whom required to account,	320
To sue and be sued as executors,	536
Administrators <i>de bonis non</i> may avail themselves of former judgments,	537
Their acts before notice of a will good,	538
Distribution how to be made,	538, 9
Husbands may administer on the estates of their wives,	539
With the will annexed to observe the same,	541
See further <i>Executors and Administrators</i> .	

ADULTERY,

Proceedings for a divorce in such cases,	93
--	----

AFFIDAVITS,

To be used in other states, how taken,	40
In the supreme court, by whom taken,	316, 400
In the common pleas and sessions,	399
In chancery may be taken by the examiners,	444

AFFIRMATION,

When admitted,	405
----------------	-----

AGE,

Non-age in certain cases no delay of suit,	89, 90
--	--------

ALBANY,

Mayor, recorder and aldermen to have the power of justices of the peace,	305
Officers thereof, when to be chosen,	327
Common council to make rules concerning fences,	334
To determine sums to be raised for the poor,	575
May consent to build a work house for the poor,	576
Spiritous liquors, how prohibited in the gaol thereof,	360, 1
Health physician therein and his duty,	374, 5
Mayor's court, by whom and how long to be held,	393
records thereof how expressed,	394

ALDERMEN—See *Albany, New-York, Justices of the Peace*.

ALIENATION,

Freeholders may alien their lands,	64
Fines for alienation abolished,	65
By tenants in dower, or of the curtesy, or for life prevented,	523-8

ALLEGIANCE,

Oath of when to be taken by electors,	9, 270
By persons naturalised,	18

ALLODIAL,

Estates in land to be allodial,	66
---------------------------------	----

AMENDMENT of the LAW,
Act therefor,

A M E N D M E N T S,

To the Constitution of the United States, how to be made,	38
Articles of amendment to the same,	32, 3
Ratified by this state,	152, 153
To the Constitution of this state,	622, 3
Mistakes in records and process, when and how amended	127—132

A N I M A L S,

Provision for destroying noxious animals,	332
---	-----

A N N U I T I E S to I N D I A N S—See *Indians*.

A P P E A L S,

From chancery and court of probates when made,	185
From decrees of surrogates,	325
Of felony, abolished,	264
To sessions from orders concerning apprentices regulated,	191
Concerning paupers,	572, 3

A P P R E N T I C E S and S E R V A N T S,

Not to be restricted in the exercise of their trades,	186
How bound to service,	186, 7
How Indian and poor children to be bound,	ibid.
Mother's consent when sufficient,	187
Covenants in the indentures of paupers,	187, 8
How punished for refusal to serve and misconduct,	188, 190
Age and money paid to be inserted in indentures,	188, 9
Their indentures when void as to them,	189
Contracts of persons from beyond sea when binding,	ibid.
Grievances of master and apprentice how redressed,	ibid.
How and when discharged,	190
Absenting themselves to serve double the time,	190, 1
Appeals to sessions from orders concerning them regulated,	191
Executors may bind infants in certain cases,	191, 2

A R B I T R A T I O N,

By rule of court and proceedings thereon,	156
Procured by undue means void,	157

A R M S of the S T A T E.

Declared,	203
-----------	-----

A R R E S T,

Of ships and vessels for debts when and how to be made,	166
Of felons and other offenders by whom made,	218
Voters at elections not liable thereto on civil process,	275, 286
Nor the militia when under arms,	510
Vexatious in the name of other persons how punished,	545, 6

A R S O N,

How punished,	253
---------------	-----

A S H E S—See *Pot and Pearl Ashes*.

A S S A U L T,

With intent to rob, murder or commit a rape, how punished,	254, 5
Affaults and batteries when and how they may be compounded,	264

A S S E M B L Y,

Their number,	8, 11, 421, 622
---------------	-----------------

To be chosen annually,	8, 14
How apportioned,	8, 421, 629
To enter objections of the council of revision on their minutes,	7
Manner of proceeding and their privileges,	9, 133
Their power to adjourn limited,	11
Journals how kept and published,	ibid.
Doors to be open,	ibid.
To hold conferences with the senate,	ibid.
To nominate a council of appointment,	13
Vested with the power of impeachment,	15
Members thereof when and how elected,	264—274
When to enter on their office,	274
How chosen in Essex, Clinton, Ontario and Steuben,	429

ASSESSORS,

When and by whom chosen,	14, 325
Their duty as inspectors of elections,	264—274
In making jury lists,	380
In respect to taxes,	547—549
In respect to taxes on Quakers in lieu of military service,	530

ASSIGNMENT

Of trusts to be in writing,	72
-----------------------------	----

ASSISE,

Damages recoverable therein,	51
Action of, and proceedings therein,	82, 87, 90, 92, 104.

ATTACHMENT

Against absconding and absent debtors—See *Debtors*.

ATTAINDER,

Acts of limited,	17
Of treason against the U. States limited,	27
Against this state limited,	216

ATTAINTS

On untrue verdicts abolished,	352
-------------------------------	-----

ATTORNEY GENERAL,

To defend suits brought under the Connecticut claim,	160
His duty in destroying certain bills of credit,	169
Not to act as attorney or solicitor in private suits,	222
To defend suits in which the state is concerned,	235
To cause suits to be brought at the instance of the comptroller,	586, 7
His duty as a commissioner of the land office,	297—302
In extinguishing certain claims,	300
As to lands forfeited or escheated to the state,	301, 311, 2
His oath,	403
To meet the inspectors of the state prison,	414
When to attend courts of oyer and terminer,	462
His compensation for the same,	ibid.
To certify convictions into the exchequer,	ibid.
His duty as trustee for the posterity of Peter Otsequette,	477
His salary,	533

ATTORNEYS DISTRICT—See District Attorneys.

ATTORNEYS,

By whom to be appointed, licensed and regulated,	14
Who may appear by them,	219, 20
Their warrants how taken and filed,	220
What persons to be admitted and their oath,	ibid.
Mal-practice how punished,	220, 1
When to sue for their fees,	ibid.
Persons prohibited, ...	ibid.

ATTORNMEN T,

By tenants to strangers void,	145
Grants good without their attornment,	358

A U C T I O N,

Duty on goods sold at auction,	408
No person to sell at auction without licence,	408, 410
Auctioneers by whom appointed,	408
To give security,	408, 9
How, when and to whom to account and pay,	409, 410
Penalty for neglect therein,	410
Certain lands and goods exempted from duty except in	
New-York,	410, 1
Goods damaged at sea by whom to be sold,	411
Restrictions on auctioneers in New-York, Albany and Hudson,	ibid.
Auctioneers when prohibited to sell by deputy or at pri-	
vate sale,	411, 2
Bellmen in New-York how restricted,	412
Public stock not to be sold at auction,	ibid.
Compensation to auctioneers,	ibid.
Duties how appropriated,	412, 3
Frauds how prevented,	413

A U D I T A Q U E R E L A,

In what cases to issue from chancery,	391
---------------------------------------	-----

B A I L,

Excessive shall not be required,	48
Felony to acknowledge it in the name of another,	120, 1
When not required on civil process,	210
When required in cases of outlawry,	249
When plaintiff may file common bail for defendant,	388
Special bail when and how made liable on their recognizance,	448, 9
Special bail in the supreme court by whom and how taken,	387
By whom and when filed,	ibid.
Surrender in certain cases how made,	ibid.
Allowed in actions of trespass on land,	388

B A I L B O N D S,

When and how to be taken,	210
Assignable, and proceedings thereon,	351

After judgment thereon when damages in the original suit to be assessed by the clerk,	355
When by jury,	ibid.
B A N K,	
Of Albany, when to execute the duties of treasurer of this state,	223
Of New-York and Albany, places of deposit for public monies, ibid.	
Of New-York to receive interest on three per cent stock and dividends for the state,	524
B A R O N and F E M E,	
Husbands may sue and distrain for arrears of rent after the death of their wives,	140
Husbands may administer on the estates of their wives,	539
B A S T A R D S,	
How maintained and the town relieved,	194
Reputed father when to give security or be committed,	195
When discharged	ibid.
How apprehended in another county,	195, 6
Recognizance to be under the controul of the sessions,	197
Persons committed how discharged,	198
Mothers when to be examined,	ibid.
Estates of parents absconding may be seized for their support,	ibid.
Persons sued under this act may plead the general issue,	199
Where to be deemed settled,	560
B E D L O W ' S I S L A N D,	
Jurisdiction thereof ceded to the United States,	169
B E E F and P O R K,	
Inspectors and repackers to be appointed,	452
Inspector general, his duty and powers,	452—454
His compensation,	454
When owner and agents in New-York to give him notice,	453
Power and duties of repackers and inspectors,	455—460
Barrels how to be made and branded,	455—458
Manner of cutting, repacking and branding pork,	456
Beef for exporting described and how to be cut, salted, repacked and branded,	456—458
When beef and pork of certain persons need not be repacked,	458
Compensation to repackers,	459
Penalty for exporting beef and pork not repacked,	ibid.
Penalties on inspectors, repackers and others for breaches of the law,	460
Penalties how recovered and applied,	ibid.
Duty of deputy inspector,	461
Of secretary of state herein,	ibid.
Rounds of beef to be exported as formerly,	ibid.
B I G A M Y,	
Crime of made felony,	122
B I L L S,	
For raising revenue to originate in the house of representatives of the United States,	21
Manner of passing them in congress into laws,	21, 22

I N D E X

631

BILLS of CREDIT.

Bills and certificates by whom to be cancelled,	169
To forge or counterfeit them made felony,	252

BILLS of EXCEPTIONS,

When and how to be taken,	376
---------------------------	-----

BILLS of EXCHANGE,

Stealing them made felony,	346
----------------------------	-----

BONDS,

To forge or counterfeit them made felony,	252
Stealing them made felony,	346
Payment may be plead in bar of them,	349
Money due on them may be brought into court,	ibid.
For performance of covenants, damages therein how assessed,	349, 350

BROKERS,

Premium allowed them for procuring loans,	58
Taking of a greater premium how prevented,	59

BROTHER-TOWN INDIANS—See *Indians*.

BURGLARY,

How punishable,	253
-----------------	-----

CANCELLING,

Bills of credit and certificates by whom,	169
---	-----

CATTLE—See *Strays*.

CENSUS,

Of electors and inhabitants when to be taken,	8, 10
Of the people of the United States,	19

CERTIFICATES,

And bills of credit by whom cancelled,	169
Stealing them made felony,	346
Of the proof of deeds, to forge them made felony,	252
Belonging to the state where deposited,	584

CERTIORARI,

To remove plaint and proceedings in replevin,	96
Not to issue unless allowed by a judge,	192
How obtained by defendants indicted,	ibid.
To be delivered in open court,	ibid.
Recognizance thereon when and how taken and disposed of,	193
When discharged,	194
How restrained in case of apprentices,	ibid.
Not allowed to remove convictions under the act to suppress immorality,	227
To remove proceedings under the absconding debtor act, judgments before justices,	243 501

CESSAVIT,

Remedy thereby,	88
-----------------	----

C H A L L E N G E S,	
Of the electors and recognitors of the grand assize how made,	48
Peremptory, how far allowed in criminal cases,	215, 261
On the part of the state how tried,	385
C H A M P E R T Y,	
How prevented and punished,	343, 4
Who are deemed champertors,	344
C H A M P L A I N - L A K E,	
Fisheries in streams running into it how preserved,	423
C H A N C E L L O R,	
Tenure of his office,	15
To hold no other office,	<i>ibid.</i>
To appoint register and clerks in chancery,	<i>ibid.</i>
Proceedings when he is a party,	443
His salary,	532
To receive no fees,	533
C H A N C E R Y—See Court of Chancery,	
C H A R G E S.	
Of persons committed for crimes, how to be borne,	262
See also <i>County Charges.</i>	
C H A R T E R S	
And grants confirmed,	16
Officers thereby created, how appointed,	<i>ibid.</i>
C H U R C H E S—See Religious Societies:	
C I R C U I T C O U R T S a n d S I T T I N G S,	
When and by whom to be appointed and held,	172-4
Clerks of the supreme court to give notice thereof,	173
Clerk at Albany to be clerk of the sittings,	<i>ibid.</i>
Clerk thereof in New-York, how appointed,	174
Clerks of the counties to be clerks of the circuits,	<i>ibid.</i>
Places of holding the circuits,	173
Powers of the circuits and sittings,	<i>ibid.</i>
Circuits how opened and adjourned in the absence of a judge,	174
Records thereof to be sent,	375
Clause in the jury process thereof,	<i>ibid.</i>
Postea how made and returned,	377
Circuit courts to hear and certify matter shewn for the remission of fines,	447, 8
C I T I Z E N S	
Of each state, their privileges in the several states,	27
Rights of the citizens of this state secured,	10, 11, 47
C L A I M S	
Against lands held under the state how extinguished,	300
C L E R G Y,	
Benefit thereof abolished,	260
C L E R K of the S E N A T E,	
When to give notice of elections,	265
His compensation,	534

CLERK of the ASSEMBLY,

His compensation, 534

CLERKS of COURTS,

In what cases and how to assess damages, 354—356

Their duty in making panels of jurors, 378, 9

In New-York and Albany to give town clerks notice of jurors drawn, 579

Their fees for a panel of jurors how paid, 380

To transmit a list of defaulters to the sheriff, 382

Their duty on striking a jury, 384

When they shall not strike a jury, 385

To note the time of filing rolls, 388

To docket judgments, 388, 9

Form of their oath, 403

To deliver sheriffs copies of sentences for the state prison, 415

To return fines and forfeitures annually to the exchequer, 446

CLERKS in CHANCERY,

How appointed, 13

CLERKS of the SUPREME COURT,

How appointed and their general duties, 13, 315

To give notice of circuits, 173

When to enter defendant's appearance, 210

Clerk thereof at Albany made clerk of the sittings, *ibid.*

Where to officiate, 315

To tax costs and sign rolls, 316

To interchange dockets of judgments, 389

CLERK of the EXCHEQUER,

How appointed and his duties, 445, 463

To give security, 445

Not entitled to any fees of office, 446

CLERKS of the CIRCUITS,

Clerks of counties, *ex officio* clerks thereof, 174

Clerk thereof in New-York how appointed, *ibid.*

To certify the minutes of trial, &c. 377

CLERKS of the OYER and TERMINER,

Clerks of counties, *ex officio* clerks thereof, 174

Their minute books to be at the expence of the counties, 177

CLERK of the COURT of PROBATES,

How appointed, 13

CLERKS of COUNTIES,

Made clerks of the circuits and oyer and terminer, 174

When to enter the defendant's appearance, 211

When to give notice of a commission or supersedeas, 203, 4

To determine the competency of sheriff's securities and file their bonds, 206

Their duty as to elections, 271, 2, 284, 5

Expences therein how paid, 272

Penalty for misconduct therein, 274, 285

To appoint deputies to act in case of vacancies,	356
To give notice annually to the governor relative to officers taking the oaths of office,	404
To give notice of vacancies in office,	ibid.
Their duty as to recording deeds,	479, 480
As to the registry and discharge of mortgages,	480, 1, 2
Penalty for neglect therein,	481
How paid for certain services on behalf of the state,	535
CLERKS of TOWNS—See <i>Town Clerks</i> .	
CLERKS of the SUPERVISORS,	
How appointed and their duty,	14, 559
Their compensation,	561
CLINTON COUNTY,	
Member of assembly therefor how chosen,	422
CODICILS—See <i>Wills</i> .	
COIN.	
To counterfeit gold and silver coin made felony,	253
COLLECTORS,	
When and by whom chosen,	14, 325
Actions against them where to be laid,	233, 4
How to plead therein,	234
Their duty in relation to taxes,	551
In collecting taxes from Quakers in lieu of military service,	520
How discharged from sums they cannot collect,	552
How responsible for deficiencies,	ibid.
How to pay monies collected for county charges,	559
How responsible for non-payment thereof,	ibid.
See further under <i>Town Officers</i> .	
COMMISSIONS	
To county judges and justices to issue once in three years,	14
Special for oyer and terminer may issue,	176
By whom to be made out and sent,	203
Form thereof to sheriffs,	204
To examine witnesses when and how to issue and be returned,	351, 2, 3
COMMISSIONERS	
To take affidavits, by whom appointed,	316
Recorder of New-York a commissioner for certain purposes	245, 290, 316, 438
Of oyer and terminer when to be sworn,	405
Of the health-office—See <i>Diseases</i> .	
Of highways—See <i>Highways</i> .	
Of excise—See <i>Taverns</i> .	
COMPTROLLER,	
To liquidate certain accounts with the United States,	170, 1
His duty in respect to elections,	272, 3, 284
Penalty for misconduct therein,	274
His duty as a commissioner of the land-office,	297—303

I N D E X.

635

His duty in extinguishing certain claims,	300
To direct prosecutions for penalties under the auction law,	413
Incidental charges concerning Indians how paid,	465
His duty in relation to taxes,	550—556
May direct prosecutions against county treasurers,	560
His office how long to continue and where kept,	581
His further general duties,	582
When to release parts of mortgaged premises,	583
To vote for directors of bank and navigation companies,	ibid.
To draw all orders and counterfign receipts for monies,	ibid.
Certain deeds and papers deposited with him,	584
Certain certificates for stock where deposited,	ibid.
Public monies in certain cases how received or paid to his order,	584, 5
To liquidate accounts with the U. States,	585
To lease the government-house in N. York,	ibid.
To attend the legislature,	ibid.
References to him how made,	ibid.
To notify public defaulters,	585, 6
How such notice to be served and returned,	586
In what manner to settle accounts,	586, 7
When to order defaulters to be sued,	585, 6, 7
What shall be evidence in such suits,	586, 7
How to borrow money to satisfy legal demands,	588
His compensation,	ibid.
To certify the amount of commutation for quit rents,	606
May authorise persons to distrain for quit rents,	608, 9
To give notice of arrears and obtain process from the exchequer,	609
To rectify mistakes in payments of quit rent,	611, 2
To draw warrants for expences relative to quit rents,	612
For the support of certain poor servants,	616

C O N G R E S S,

Recommend the establishment of governments,	2
Declaration of independence,	6
Delegates under the confederation how appointed,	14
Of the United States,	19
When to meet,	21
Its powers,	22, 25, 28
Limitation of its powers,	23, 32
Compensation of the members how ascertained and paid,	21

C O N N E C T I C U T,

Intrusions on land under claim of that state how prevented,	159
Service of process under foreign authority how prevented,	167

C O N S P I R A T O R S.

Who are deemed such and how punished,	344
---------------------------------------	-----

C O N S T A B L E S,

When and by whom chosen,	14, 325
Their duty in respect to private lotteries,	38
To make fresh pursuit after felons,	216
Actions against them where to be laid,	223, 4

To plead the general issue and to recover double costs therein,	234
To aid and obey inspectors of elections,	272
Their duty in serving process in justices' courts, 492, 3, 6, 9.	500, 2
In transporting paupers,	567, 8
Allowance for the same,	569
See further <i>Town Officers</i> .	

CONSTITUTION,

Of this state,	1—18
Amendments thereto,	622, 3
Of the United States,	19—29
Amendments thereto,	32
Ratification thereof by this state,	152, 4, 8, 9

CONTRACTS,

For the sale of goods to £10. and upwards when binding	79
--	----

CONVENTION,

Empowered to establish a government in this state,	3—5
To amend the constitution,	621

CONVEYANCES,

How expounded,	65
Of goods in trust when void,	75
Of lands and goods to defraud creditors void,	ibid.
To defraud purchasers void,	76
Penalty for justifying such conveyances,	77
Of land with power of revocation when void,	ibid.
<i>Bona fide</i> conveyances and mortgages without notice good,	78
Declarations and assignments of trust to be in writing,	79
Effect of those made by the surveyor general,	307, 8
See further <i>Deeds</i> .	

CORONERS,

When and for what time to be appointed,	13
To hold no other office,	ibid.
Their duty concerning goods and vessels wrecked,	62—64
To act in case of vacancy in the office of sheriff,	207
To make fresh pursuit after felons,	218
When they may sue for their fees,	221
Not to act as counsellors, attorneys or solicitors,	ibid.
To be appointed in every county,	228
Their general duty,	ibid.
Delinquencies in them how punished,	229
Return by one coroner to process good,	ibid.
Actions against them where to be laid,	233, 4
To plead the general issue and recover double costs,	234
Form of their oath,	402
When and how to account in the exchequer,	446, 7

CORPORATIONS RELIGIOUS—See *Religious Societies*.

COSTS,

On trial of traverse in forcible entry and detainer,	104
Against informers,	110
On writs of mandamus,	116

I N D E X.

637

On informations in nature of <i>quo warranto</i> ,	117
On removal of indictments,	194
Treble costs to the defendants under the act concerning bastards,	199
Under the act to suppress immorality,	228
Double costs to defendant sued for acts done as an officer,	234
On claim of property under the absconding debtor act by whom paid,	237
May be taxed by the clerk of the supreme court,	316
On reference,	348, 9
Where defendant pleads several pleas,	351
How far recoverable where two or more persons are sued separately for the same matter,	354
In supreme court on <i>certiorari</i> upon justices judgments,	501
Plaintiff recovering damages shall recover costs,	528
Defendant when to recover costs,	528—531
Avowant in replevin to have costs,	529
In suits in the supreme court for sums not above 250 dolls,	ibid.
In suits in the common pleas, when plaintiff shall pay costs,	530
Plaintiff when to recover no more costs than damages,	ibid.
Full costs if trespass be wilful and malicious,	ibid.
On <i>scire facias</i> and prohibition,	530, 1
For not declaring, or on discontinuance or nonsuit,	531
To defendant on demurrer or in error,	ibid.
On writs of error,	531, 2
On dismissal of bills in chancery,	532
In suits for debts due or claimed by the state,	532, 586, 7
How to be paid in suits for legacies and distributive shares,	541
On proceedings in partition,	544, 5
On appeals concerning the poor,	573

COUNCIL of APPOINTMENT,

How constituted, its powers and duties,	13, 202, 3
Their minutes declared public records,	203
Compensation to the members thereof,	534
Right of nomination vested concurrently in the governor and members,	623

COUNCIL of REVISION,

How constituted, its powers and duties,	7, 202
Bills to become laws if not duly returned by the council,	ibid.

COUNSELLORS,

How appointed, licensed and regulated,	14
Who may be admitted as such,	220
How punished for malpractice,	220, 1
Persons prohibited from practice,	221

COUNTERFEITING

Records and certain writings and money made felony,	251—253
How punished,	253

COUNTIES,

New ones may be erected,	10
--------------------------	----

COUNTY CHARGES,

By whom allowed and ordered to be raised,	558
---	-----

How apportioned, collected and applied, 558, 9
 How recovered from defaulting collectors, 559

COUNTY TREASURERS—See *Treasurers of Counties.*

COURTS,

New courts to proceed according to the common law, 17
 Places of holding them may be changed in case of sickness
 or other public calamity, 316

COURT for the TRIAL of IMPEACHMENTS
 and CORRECTION of ERRORS—See
Error and Impeachments.

COURT of CHANCERY,

To have three seals and where deposited, 439
 Manner of drawing up decrees, *ibid.*
 Proceedings therein against mortgagors who abscond, 406, 7
 Proceedings when to be on paper and before the chancellor, 440
 How suits shall survive therein in cases of death, *ibid.*
 Issuing of process regulated, 441
 Proceedings when defendant will not appear, *ibid.*
 Time allowed for an absent defendant to come in, 442
 When the court to order defendant's appearance entered, *ibid.*
 Proceedings where the chancellor is a party, *ibid.*
 Monies deposited therein to be lodged in the banks, 443
 Proceedings on sales of mortgaged estates, 443, 4
Subpoena to hear judgment abolished, 444

COURT SUPREME—See *Supreme Court.*

COURT of EXCHEQUER,

By whom to be held, 444
 Its powers and duties, 444, 5
 Seal and process of the court, 445, 6
 Form of executions therein for fines, 447
 Form thereof in other cases, 448
 To allow compensation to persons employed to recover fugitives from justice, *ibid.*
 When to allow compensation to the attorney general and district attorneys, 462
 To examine and audit accounts of district attorneys, 463
 When and how to cause lands to be sold for payment of quit rents, 609, 610

COURTS of OYER and TERMINER and GAOL DELIVERY,

When and by whom to be held, 175
 Powers thereof and how continued, *ibid.*
 Sheriff's duty therein, 175, 6
 Precepts therein how to be tested and issued, 176
 Special commissions thereof may issue, *ibid.*
 Judges of the supreme court to be named therein, 177
 To direct process into any county, *ibid.*
 Process not discontinued by a new commission, *ibid.*

Courts of gaol delivery may pass sentence on persons convicted before others,	177
To proceed on indictments received from the sessions,	ibid.
Justices of the peace excused from attendance,	178
When commissioners thereof must be sworn,	405

C O U R T of P R O B A T E S,

Powers thereof,	13, 317, 321.
Where to be held and seals thereof,	317
Administration to whom and how granted,	318—322
When parties to be cited and heard,	319
To take bonds of administrators,	ibid.
When to order the same prosecuted,	320
To call administrators to account and decree distribution,	ibid
Its power in case of legacies,	321
How to enforce its decrees,	ibid.
When and how to order real estates sold to pay debts,	323, 4
How to distribute the proceeds of such sales,	324
When to appoint guardians to infants,	325
Monies deposited therein to be lodged in the banks,	443
Salary of the judge of probates,	621

C O U R T S of S U R R O G A T E S—See *Surrogates*.

C O U R T S of C O M M O N P L E A S.

To license ferries,	163
Mayors courts in New-York, Albany and Hudson by whom to be held,	393, 4
Terms thereof how long to continue	ibid.
Records and process thereof how to be expressed,	394
Courts of common pleas in the counties by whom to be held,	395
Seals of the common pleas and mayor's courts,	ibid.
Jurisdiction and powers thereof,	ibid.
Times and places of holding the same,	395—398
How long to be held,	398
How to be adjourned for want of a quorum,	ibid.
Teste and return of their process,	ibid.
Process of <i>Subpoena</i> to issue into any county,	399
Form of the records,	399, 400

C O U R T S of G E N E R A L S E S S I O N S of the P E A C E,

Their power over disorderly persons,	124, 5
When to send indictments to the courts of oyer and terminer,	177
May discharge apprentices and servants,	189
To hear appeals from orders concerning apprentices & servants,	191
Their power concerning bastards,	197, 8
Their general powers,	302, 3
Process and pleas not discontinued by a new commission,	ibid.
To amend defects of form on appeals,	ibid.
May bail persons confined on suspicion of felony,	304
May suppress tavern licences,	487
By whom to be held in New-York and the terms thereof,	394
By whom to be held in the other counties,	395
Times and places of holding the same	395—398

How long to be held,	398
How to be adjourned for want of a quorum,	ibid.
Teste and return of their process,	ibid.
Process of <i>Subpoena</i> how and where to issue,	399
To hear and determine appeals concerning the poor,	572, 3

COURTS of SPECIAL SESSIONS of the PEACE in N. York,	
When to be held and their powers,	394

COURTS of SPECIAL SESSIONS for Trial of small Offences,	
In New-York by whom to be held,	305

To try and punish offences under grand larceny,	ibid.
In the other counties by whom to be held,	306
Their power and proceedings,	ibid.
Limitation of their powers,	ibid.
Charges of those courts how defrayed,	ibid.
Fines imposed by them how applied,	ibid.
See also <i>Justices' Courts</i> .	

COURT HOUSES,	
In the several counties how to be repaired,	561

CREDITORS,	
Conveyances to defraud them void,	75
May be witnesses to wills of land,	180
May have new execution against debtors on escapes,	213
May sue heirs and devisees on simple contract and other debts,	245, 6

CRIMES,	
Punishable with death or the state prison,	253—257
Crime against nature how punished,	253

CROTON-RIVER,	
Fishery therein how preserved,	423

CULLERS—See *Staves and Heading*.

CURSING,	
How punished,	225
Penalties therefor how collected and disposed of,	226, 7

CURTESY,	
Tenants thereby may recover their lands lost by default,	85

DAMAGES,

Given in assise and possessory actions,	51
In dower,	ibid.
In waste,	55
For disseisin by an officer by colour of his office,	83
By grant from the state without title,	84
In assise where the entry is found to be with force,	ibid.
In forcible entries and detainers,	104
Recoverable on writs of mandamus,	116
For rescous of a distress or for irregular distress,	136

Treble to defendant sued for acts done by authority of a statute,	234
In debt on bonds for performance of covenants how ascertained,	349, 350
Done by beasts how ascertained and recovered,	333, 4
In what cases and how assessed by the clerk,	354—356

DEAD BODIES,

Offence for digging up or dissecting them how punished,	420
When persons may be ordered for dissection,	421

DEATH,

<i>Cestui que vie</i> absent seven years to be deemed dead,	111
In what cases chancery to order infants and others to be produced,	112
When persons not produced to be deemed dead,	113, 114
Persons evicted may re-enter on proof that the absent person is living,	112, 114
Guardians of such infants when liable,	115
Crimes punishable therewith declared,	253
Persons when adjudged civilly dead,	256
Of one of the parties when not to abate the suit,	351

DEBTORS,

When not to be confined above thirty days,	290
Their estates in such cases still liable,	291
Discharged not to be again arrested except in cases of perjury,	291, 4
In execution for certain sums how relieved on their own petition,	291—293
How relieved on petition of their creditors,	432
When relieved by the courts of common pleas,	293
Guilty of perjury how punished,	294
Power and duty of the assignees,	292—295
Court may remove assignees and appoint others,	295
When debarred from relief,	296, 433

DEBTORS ABSCONDING or ABSENT,

How proceeded against,	236
Attachment by whom to be procured and issued,	ibid.
How executed,	ibid.
Notice thereof to be given,	ibid.
Perishable goods how and when to be sold,	237
Claim of property how tried,	ibid.
Payments and sales after notice of the attachment void,	ibid.
In what manner proceedings may be superseded,	237, 242
Trustees when and by whom appointed,	238, 243
Their powers vested in the survivor,	240
To take an oath,	238
To notify debtors and creditors,	ibid.
To collect debts and sell the estate,	239
To settle accounts and examine persons on oath,	240
To settle controversies by reference,	241
To call the creditors and make distribution,	ibid.
How to account and their commissions,	244
Persons concealing effects how punished,	239

Debtor and witnesses how compelled to discover,	239, 240
False swearing deemed perjury,	240
Persons discovering secreted effects how rewarded,	ibid.
Demands not due paid on a rebate of interest,	241, 2
Creditors when excluded from the dividend,	242
How vessels may be discharged from attachment,	ibid.
Death of debtor when not to stay proceedings,	ibid.
Debtors residing out of the state liable under this act,	ibid.
Who may execute this act,	243, 245
Judge to report and file the proceedings,	242
Appointment of trustees when and how recorded and effect thereof,	ibid.
Convicts in the state prison when and how liable under this act,	244, 5
Persons sued for executing this act to plead the general issue,	244

DEBTORS INSOLVENT,

May with three fourths of their creditors petition for a discharge,	428
Creditors who petition to relinquish security,	ibid.
Purchasing debt to be petitioners only for the sum paid,	ibid.
Affidavit of the creditor,	429
How to petition by attorney,	ibid.
How to procure assignment of estates of debtors in prison,	432
Penalty for swearing falsely,	434
To deliver their account and inventory on oath,	429, 430
To give notice by advertisement,	ibid.
How persons may be examined,	431, 435
When and how discharged,	431
When to assign altho' not petitioners,	432, 3
How executors and administrators may become petitioners,	433
May plead the general issue if sued after discharge,	434
If guilty of fraud or perjury discharge void,	ibid.
Penalty on persons concealing their estates,	434
How to proceed where they have become bail,	435
Their allowance when the estate yields a certain sum,	438
Dividends when and how to be made,	435—438
Assignees how appointed,	430
Their power, duty and oath,	436—8

DEBTORS JOINT,

Proceedings when all cannot be taken,	353
How sued when bound in one bond or recognizance,	354

DEBTS,

Against the United States preserved,	28
Ships and vessels liable to arrest for debts of masters, &c.	166
Reported due from this state to the U. States how to be settled,	170
Mutual may be set off against each other,	347
How recoverable before justices—See <i>Justices' Courts.</i>	

DECEIT,

Writ of, when maintainable,	81
-----------------------------	----

DECLARATION—See *Pleadings*.

D E E D S,

Acknowledging them in the name of another made felony,	120, 1
To forge or counterfeit them made felony,	251
Effect of those made by the surveyor general,	307, 8
Before whom and how acknowledged and proven,	478
Of <i>feme covert</i> s how acknowledged,	ibid.
Of British subjects abroad how acknowledged and proven,	479
Of lands in certain counties to be recorded,	ibid.
Duty of secretary and clerk as to recording deeds,	479, 480
Acknowledged and recorded, or record thereof, good evidence,	ibid.
Penalty on officers for breach of duty herein,	480
Belonging to the state, except mortgages, to be deposited in the secretary's office,	584

D E E R,

Destruction of them in certain seasons how prevented,	147
---	-----

D E F A U L T,

Form of writ to recover dower lost by default,	58
Lands lost by default,	81
Proceedings in suits for lands lost by default,	85

D E L E G A T E S to C O N G R E S S,

Under the confederation how appointed,	14
--	----

D E M U R R E R,

In what cases want of form not regarded,	131
--	-----

D E P U T Y,

Special deputy of sheriff need not be sworn,	207, 402
--	----------

D E S C E N T,

In certain cases regulated,	45, 6
Estates by the curtesy or dower not affected thereby,	46
Posthumous children may inherit,	46

D E V I S E—See *Wills*.

D E V I S E E S,

Made liable in the same manner as heirs,	245, 6
Manner of proceeding against them,	ibid.

D I S C O N T I N U A N C E

Of estates by certain tenants for life void,	225
--	-----

D I S E A S E S,

Commissioners of the health office established,	361
Their duty,	363, 7, 371, 2
Vessels subject to quarantine and regulations concerning them in New-York,	362, 3, 4, 6, 7, 9, 370
In other parts of the state,	374
Duty of masters of vessels in the premises,	365
Duty of pilots as to vessels subject to quarantine,	364, 5, 370
Penalties on them for breach of duty,	365, 370
Health-officer, his powers and duty,	365, 6, 7, 371
Regulations relative to sick persons,	367
Cotton, hides, &c, when prohibited from importation,	368

EATON's NECK,	
Jurisdiction thereof granted to the United States,	165
EJECTMENT,	
For non-payment of rent, proceedings therein,	142
When and how landlords may be admitted defendants is,	145
ELECTION of GOVERNOR,	
and MEMBERS of the LEGISLATURE,	
To be by ballot,	8, 9. 264, 5
Balloting if found inconvenient to be abolished,	9
When and how to be held,	265
Who are to be inspectors,	ibid.
Notice of election for governor and senators when and by whom given,	ibid.
Inspectors to give notice in their towns,	ibid.
To take an oath and appoint clerks,	266
How to open and adjourn the poll,	ibid.
Penalty for receiving a ballot without oath of allegiance,	270
To canvass and certify the votes to the clerk of the county,	271, 2
To imprison disorderly persons,	273
Poll lists how kept,	267
How disposed of on adjournments,	268
When to be destroyed,	272
Electors of assembly, their qualifications,	9
Of governor and senators,	9, 10
To vote where they reside	267
When required to take oaths and forms thereof,	268—270
For senators need not designate,	274
Mortgagors and mortgagees when qualified to vote,	ibid.
Certain persons not qualified as electors,	ibid.
Exempted from civil process pending the election,	275
Mode of conducting elections for governor and senators,	267
For members of assembly,	267, 8
Clerk to forward to the secretary of state the certificates of votes for governor and senators,	271
To determine and certify members of assembly,	272
His expences how paid,	ibid.
Oath of special messenger,	271
How and by whom election for governor and senators to be determined,	271, 2, 3
Persons who so determine to take an oath,	273, 4
Penalty on public officers for misconduct,	274, 5
On persons guilty of bribery or corruption,	275
For calling out the militia at or near the election,	ibid.
Persons elected when to enter on their offices,	274
Members of assembly in Essex and Clinton and in Ontario and Steuben how chosen and returned,	422
ELECTION of SENATORS in CONGRESS,	
Time and manner prescribed,	199

ELECTION of REPRESENTATIVES,

By whom to be regulated,	21
The state divided into ten election districts,	283
When, by whom and in what manner made,	284
Result of the election how notified,	ibid.
Special elections how appointed and conducted,	284, 5
Penalties for misconduct in respect to such elections,	285
Civil process not to be served on voters,	286

ELECTORS,

Of the grand assize, their qualifications,	42
Challenges to them when made and how tried,	43
Of president and vice president how appointed and when to meet,	161

EMBRACERY,

How punished,	345, 386
---------------	----------

ENTAILS,

Abolished and turned into fee simple estates,	44
Conveyances by tenants intail confirmed,	ibid.

ENTRY,

Damages recovered in writs of entry,	51
Writs of, in what cases to be had,	80—82
In what cases nonage not allowed in those writs,	89
Into land when not tolled,	563

ERROR,

To reverse fine or recovery when to be brought,	74
Variance between writ of error and record may be amended,	132
Time for bringing writs of error and appeals,	185
Writs of, when of right and when of grace,	200
When a <i>superseas</i> to execution,	ibid.
When not to issue without certificate of counsel,	201
Death between verdict and judgment no error,	ibid.
Want of 15 days between teste and return of process no error,	ibid.
When diminution of record may be alledged,	400
Reversioners and remainder-men when to have writ of,	526
Lies on judgment in partition,	547
Court for the correction of errors instituted,	14, 183
Seal, clerk and process thereof,	183
Proceedings on error from the supreme court,	184
On appeals from chancery and the court of probates,	185
Proceedings how continued when a quorum doth not meet,	ibid.
Questions on error and appeals how determined,	ibid.

ESCAPE,

In what cases sheriff answerable therefor,	95, 212
What shall be deemed an escape,	212
Penalty on sheriff for conniving at escapes,	213
Creditor may have new execution thereon,	ibid.
Retaking on fresh pursuit when and how to be plead,	ibid.

Willful escapes of persons committed under the absconding debtor act how punished,	240
From state prison—See <i>State Prison</i> .	
Aiding persons to escape from gaols how punished,	256
E S C H E A T S.	
How administrators to account for the unclaimed surplus of personal estates,	310
Persons claiming the same how to obtain it,	311
How lands escheated to be vested in the state and sold,	311, 2
How lands and chattels forfeited for treason are vested and sold,	312, 3
E S O P U S,	
Swinging gates therein how maintained,	604
E S S E X C O U N T Y,	
Member of assembly therefor how chosen and returned,	422
E S S O I N S,	
Abolished,	357
E S T A T E S,	
In certain cases how to descend,	45
By livery and seisin or by parol deemed estates at will,	79
Death of persons on whose life they depend how discovered,	111, 2, 3
<i>Pur autre vie</i> made deviseable,	178
E X A M I N E R S,	
In chancery authorized to take affidavits	444
E X C E P T I O N S,	
Bills of, how to be taken,	376
E X C H E Q U E R—See <i>Court of Exchequer</i> .	
E X C I S E—See <i>Taverns</i> .	
E X E C U T I O N,	
Lands of <i>cestui que use</i> liable to execution,	68
Goods of tenant not to be removed thereon till rent paid,	137
Duty of sheriff in cases of resistance,	209
Creditors may have a new one on escape,	213
Within what time to charge prisoners in execution,	296
When it binds goods,	389, 390
May issue against the estate or body of the debtor,	390
Form thereof against the estate,	ibid.
Against tenants, heirs and devisees,	ibid.
Remedy where one pays more than his share or where a purchaser is evicted,	391, 2
Remedy where debtor dies in execution,	392
When delayed by writ of error,	200
Sales of land thereon regulated,	392—3
E X E C U T O R S,	
Of tenants in fee or for life may sue or distrain for arrears of rent,	139, 140
Those who qualify may sell land under a power,	180
May bind children in certain cases to learn a trade,	191

Executors of executors how to sue and be sued,	536, 7
Who shall be deemed executors in their own wrong,	538

EXECUTORS and ADMINISTRATORS,

Not chargeable on their own promise except in writing,	79
When and how authorised to sell real estates to pay debts,	323, 4
How to plead when sued for a balance reported against them,	348
How to become petitioners for insolvent debtors,	433
Inventories how made and disposed of,	536
How to be cited to account,	ibid.
Account and trespass may be brought by and against them,	ibid.
Executors and administrators of executors and administrators liable for waste,	537
When and how suits may be revived by and against them,	ibid.
May have a writ of <i>idempsitate nominis</i> ,	ibid.
In suits against several such as first appear shall answer,	538
No judgment against them to affect lands,	ibid.
Time allowed for paying legacies,	539
Legatees and next of kin to give security to refund,	ibid.
Legacies and distributive shares how recovered at law,	450, 1

EXTORTION,

How prevented and punished,	120
Penalty on sheriffs for extortion,	209.

FALSE PRETENCES,

Obtaining money or goods thereby punished,	254, 5
--	--------

FELONS,

How and by whom to be pursued and arrested,	218
Penalty for neglecting to pursue them, or for concealing felonies,	218, 9
How apprehended in another county,	219
Standing mute how tried,	259
How arraigned and tried,	ibid.
To be sent into the county where the offence was committed,	261
Foreign pleas by them how tried,	ibid.
Allowed process for their witnesses,	ibid.

FELONY,

To acknowledge certain acts in the name of another,	120, 1
To steal or avoid a record,	121
In servants to embezzle their masters' goods,	122
To marry in the life time of former husband or wife,	122, 3
Forcible taking and marrying a woman declared felony,	235
Malicious maiming made felony,	250, 1
To forge or counterfeit records and certain writings,	251, 2
Gold or silver coin,	253
How punished,	253, 4, 5
Forfeitures therein abolished,	259
Indictments therein to be sent to the proper counties,	261

Peremptory challenges how far allowed,	261
Party robbed when restored to his goods,	262
Charges of persons committed how borne,	262, 3
Expences of prosecutor and poor witnesses when & how paid,	263, 4
Civil remedy not merged therein,	264
Appeals thereof abolished,	ibid.
To steal bonds, notes and other securities,	346
F E M E S C O V E R T,	
To be examined on levying fines	70
Cannot devise land,	178
Their deeds when and how to be acknowledged,	478
To be received to defend their rights on default of their husbands,	526
Acts of husbands not to prejudice their rights,	ibid.
Husbands to administer their personal estates,	539
F E N C E S,	
Between persons whose lands join, how made,	332
When they may be removed,	333
Inclosing low land or meadows how repaired,	ibid.
Disputes concerning them how settled,	332
F E N C E V I E W E R S,	
When and by whom chosen,	325
To settle disputes about division fences,	332
To ascertain damages done by beasts distrained,	333, 4
F E R R I E S,	
How regulated,	162
F I N E S,	
To be reasonable,	48
When expences of witnesses and prosecutors to be paid from them,	263, 306
F I N E S of L A N D,	
To be levied in the supreme court,	69
Proceedings thereon,	70—72
Effect thereof,	72
Entry to avoid them when good,	73
Proceedings to be inrolled,	ibid.
Foot thereof to be recorded,	74
Note thereof to be affixed on the court-house door,	ibid.
Not to be reversed for want of form,	ibid.
Error thereon to be brought in five years,	ibid.
Felony to levy them in the name of another,	120, 1
F I R I N G	
Guns, rockets, &c. at certain times and places prohibited,	41
Of woods how restrained,	146
F I S H E R Y,	
Act for the preservation thereof in certain waters,	423
F L A X - S E E D,	
Exportation thereof regulated,	230
Compensation to measurers thereof,	ibid.

I N D E X.

651

FLOUR and MEAL,

Inspectors and deputy inspectors to be appointed,	424
To be sworn,	ibid.
Their power and duty,	425, 6, 7
To be inspected,	424
In Kings county where inspected,	ibid.
Casks and brands described,	425
Penalties for exporting them contrary to this act,	436, 7
For other breaches thereof,	437
How recovered and applied,	ibid.

FORCIBLE ENTRIES and DETAINERS,

How prevented,	101—105
Duty of justices and other officers concerning them,	ibid.
Actions for and proceedings thereon,	102, 3, 4
No restitution after three years possession,	103
Tenants for years and guardians to have remedy thereby,	104

FORFEITED ESTATES,

Claims against them when barred,	162
----------------------------------	-----

FORFEITURE,

In treason and effect thereof,	216
In other cases abolished,	259
How lands and chattels forfeited to be seized and sold,	312

FORGERY,

Of records and certain other writings deemed felony,	251, 2, 3
Certain bills altered presumed to be to a greater amount,	252
How punished,	253

FORT-GEORGE,

In New-York reserved for public uses,	154
---------------------------------------	-----

FORTIFICATIONS,

Monies how expended thereon by this state,	170, 1
--	--------

FRAUDS,

Deeds of chattels in trust for grantor void,	75
Deeds of lands and goods to defraud creditors void,	ibid.
To defraud purchasers void,	76
Penalty for justifying such conveyances,	77
Grants of land with powers of revocation when void,	ibid.
Statute of frauds in what cases not to apply,	78
When leases, contracts and declarations and assignment of trusts to be in writing,	79, 80

FUGITIVES

From justice, how apprehended in another state,	27
Persons employed to take them how paid,	448

GALLOWAY JAMES,

Allowed to erect a dam across Mud-creek on conditions,	603
--	-----

G A M I N G,

Securities given for monies won by gaming void,	231
Mortgages and deeds so given how to enure,	ibid.
Money lost by gaming when recovered back,	ibid.
Defendants compelled to answer in chancery,	232
Persons winning by fraud how punished,	ibid.
Persons winning or losing certain sums how punished,	ibid.
Gamblers bound to good behaviour,	233
Offenders when discharged,	232, 3
Gaming in taverns how punished,	488

G A O L S,

When to be used as houses of correction,	125
Sheriffs to have the custody of them,	208
Prisoners therein how to be treated and kept,	211, 2
Gaolers how punished for wilful escapes of persons committed under the absconding act,	240
Persons aiding escapes therefrom how punished,	256
In the several counties established,	358, 9
Liberties thereof how ascertained,	359, 360
Spiritous liquors not to be sold in the gaols of New-York and Albany without permit,	360, 361
Supervisors to keep them in repair,	561

G O O D S,

Stolen or robbed when to be restored,	262
Buyers and receivers of stolen goods how punished,	261
Damaged at sea by whom to be sold,	410

G O V E R N O R,

Executive power of the state vested in him,	11
When, by whom and how chosen,	11, 265
His power and duty,	11, 12
President of the council of appointment,	13
May grant pardons on conditions,	158
His duty as to intruders under the claim of Connecticut,	160, 1
To notify electors of president and vice president,	161
When to convene the legislature to appoint electors,	ibid.
To deliver laws to the secretary of the state,	202
When to enter on the execution of his office,	274
To appoint special elections for representatives in congress,	284
His duty as a commissioner of the land office,	297—302
Authorised to remove the courts in cases of sickness,	316
May designate vessels subject to quarantine,	363
May order attorney general to attend courts of oyer and terminer,	462
May order out the militia in cases of danger,	512
His salary,	532
Private secretary of the governor, his salary,	535
His concurrent right of nomination in the council,	623

G O V E R N O R ' s I S L A N D,

Jurisdiction thereof ceded to the United States,	169
--	-----

G R A N D J U R Y,

Foreman thereof may administer oaths,	358
---------------------------------------	-----

I N D E X.

658

G R A N T E E S

Of reversions, remedy for and against them, 105

G R A N T S,

By the king of Great-Britain after a certain time void, 16

Good without attornment, \$57, 8

G U A R A N T E E,

Of a republican form of government to each state, 28

G U A R D I A N S,

May have a writ of admeasurement of dower, 53

Punishable for waste, 55

Of infants when adjudged trespassers, 115

By will or deed how appointed and their powers, 181, 2

Overseers made guardians of poor children bound out, 188

To defend for infants, how appointed, 220

Their duty when real estate ordered to be sold, 325

To give security in suits for legacies and distributive shares, 540

Their duty in cases of partition, 545

H A B E A S C O R P U S,

Not to issue unless allowed by a judge, 192

What actions and to what amount removeable, *ibid.*

When to be delivered to the court below, *ibid.*

Not allowed after a *procedendo*, 193

Prisoners in execution removed to be remanded, 212

For relief of prisoners when and by whom granted, 287

Penalty for denying or disobeying the writ, 286, 7, 8

Prisoner thereon to be bailed if bailable, 287

Penalty for refusing a copy of the warrant, 286, 7

For reimprisoning a person once discharged, 288

Prisoners when entitled to bail if not indicted, *ibid.*

When to be discharged if not tried, *ibid.*

Not removeable after oyer and terminer proclaimed, 289

Persons not bailable by this writ under the statute, *ibid.*

Citizens when not to be sent out of the state, *ibid.*

Penalties under the act how recoverable, 290

Recorder of New-York a commissioner to execute this act, *ibid.*

H A W K E R S and P E D L A R S,

How restrained and punished, 41

H E A D I N G—See *Staves and Heading.*

H E A L T H O F F I C E and O F F I C E R—See *Diseases.*

H E I R S,

In certain cases how to inherit and hold, 45

May have actions for waste committed in life time of their

ancestor, 56

May be sued for the debts of their ancestors, 245

How far and when liable, 345; 6

Proceedings against heirs and devisees, 246

H E M P S T E A D,	
And N. Hempstead, certain privileges thereof,	335
H I G H W A Y S,	
Commissioners thereof when and by whom chosen,	325
Their duties,	588, 9
Appeals from their decisions,	589
To divide towns into road districts,	ibid.
To settle differences relative to roads,	ibid.
To apportion to each person his days to work,	590
When to fill vacancies of overseers,	593
To account annually and exhibit a statement of necessary improvements,	598
To erect mile stones and guide posts,	599, 600
Their compensation,	600
Overseers thereof when and by whom chosen,	326
Their duties,	589, 590
To make and furnish lists of persons to work,	590
When to make new assessments,	591
To account yearly to the commissioners,	592
And pay the balance remaining in hand,	593
Penalty on them for neglect of duty,	ibid.
Who are liable to work on roads	590
Number of days each person to be assessed,	590, 1
Rate of commutation,	591
Team and horses or oxen equal to three day's work,	ibid.
Penalties for refusing to furnish a team or to work	ibid.
How recovered and applied,	593
No person to work out of his district,	ibid.
Hours to work in a day,	ibid.
Damages of roads through improved lands how assessed,	593, 4
No road through certain orchards or gardens without consent,	594
No road through improved lands without consent or the oath of twelve freeholders,	ibid.
Private roads how laid out and damages assessed,	594, 5
Width of roads,	595
Certain former roads established,	ibid.
Penalty for obstructing highways and rivers how levied and applied,	595, 6
Encroachments how removed and disputes concerning them settled,	596
Penalty for obstructing certain streams,	597
Trees in the highway belong to the owner of the soil,	ibid.
Swinging gates where allowed and how protected,	597, 8
Penalty for injuring mile stones and boards,	599
Supervisors when to raise money for road improvements,	ibid.
When to cause bridges to be made or repaired,	ibid.
Appeals from their decisions how made,	600
Penalty for injuring guide posts,	ibid.
Regulation in certain counties of carriages and travellers passing,	600-601

Two public roads to be laid out between Albany and Schenectady,	601
Monies already collected how to be applied,	ibid.
Former laws repealed,	ibid.
Certain rivers declared public highways,	601, 2
Penalty and punishment for obstructing the same,	602, 3
Commissioners appointed for the Schoharie-bridge,	603
Certain monies to be paid to the supervisors,	603, 4
Private road in Rockland county how repaired,	604
Bridge over the Ramapough-creek in Rockland county how repaired,	ibid.
Swinging gates over Esopus low lands how maintained,	604, 5
Superintendants how to account,	605
Width of waggons regulated,	ibid.
HOSPITAL in NEW-YORK,	
Annual payment thereto for five years,	201
HOUSE BREAKING,	
How punished,	253
HUDSON, CITY of	
To be deemed a town within the election law,	276
Within the tax law,	551
Within the highway act,	601
Officers therein when chosen,	327
Common council to make rules concerning fences,	334
Health physician and his duty,	374, 5
Mayor's court by whom and how long held,	394
Records and process of the court how expressed,	ibid.
Oath of the marshal,	402
Common council to determine the sums to be raised for the poor,	575
May build a work house for the poor,	576
HUE and CRY,	
When and by whom to be made and pursued,	218
HUSBAND—See <i>Baron and Feme.</i>	

I D E O T S,	
Incapable of devising their lands,	178
Chancellor to have charge of them,	216
Inventory of their estates how made and filed,	216, 7
When their real estates to be sold,	217
Partition of their lands how made,	ibid.
How their estates to defend and be distributed on their death,	218
J E O F A I L S,	
Mistakes in records and process when and how amended,	127
I M M O R A L I T Y,	
Act for suppressing it,	224

I M P E A C H M E N T S,

Court of, in this state how instituted,	14, 182
Members to be sworn,	15, 183
Power of impeachment vested in the assembly,	15, 184
Proceedings thereon,	183
Judgment thereon,	15, 183
Party impeached allowed counsel,	15
Officer impeached suspended from office,	184
By whom to be tried in the United States,	20
Judgment thereon in the United States,	ibid.

I M P R I S O N M E N T,

In the state prison—See <i>State Prison</i> .	
Unjust imprisonment how prevented,	32, 47, 8

I N D E P E N D E N C E,

Declaration thereof,	6
Approved by the convention of this state,	ibid.

I N D I A N S,

Purchases of lands of them when void,	16
Making contracts with them concerning lands when and how punished,	464
All contracts with certain Indians void,	ibid.
Penalties for selling spiritous liquors to Indians,	464, 5
Incidental charges concerning Indians how paid,	465
Certain agreements between them and the state confirmed,	465, 6
Annuities to certain Indian tribes when and how paid,	466
Regulations relative to the New-Stockbridge Indians,	467, 8, 9
Powers and duties of their peace makers and other officers,	ibid.
Regulations relative to the Brother-Town Indians,	469—476
Superintendants how appointed and their duties,	469, 476
Their lands how to descend,	470
Annuities to them how paid and applied,	ibid.
Public schools therein maintained,	470, 471
Duty of the attorney for such Indians,	471, 4, 6
How actions by them to be brought,	471, 2
Powers and duties of their keepers of the peace,	472—475
Their town meetings and proceedings therein,	474, 5
Powers, duty and compensation of their town clerk,	474, 5, 6
Powers of their overseers of the poor,	476
Power and compensation of their marshals,	475
Regulations relative to the Shinecock Indians,	476, 7
Power and duty of their trustees,	ibid.
Posterity of Peter Otsequette, provision therefor,	477

I N D I C T M E N T S,

The words with <i>force and arms</i> not necessary therein,	261
For perjury and subornation of perjury when sufficient,	313, 4

I N F A N C Y,

Not allowed in writs of entry in the <i>per</i> ,	89
Inquests in what cases not delayed thereby,	90

I N F A N T S,

When chancery to order them to be produced,	112
Cannot devise lands,	178
May be bound as apprentices and servants,	186
When infant trustees may be ordered to convey,	218

I N F E C T I O U S D I S E A S E S—See *Diseases*.

I N F O R M A T I O N S,

Proceedings therein regulated,	106—111
Covin and misconduct therein how punished,	108, 9
Not to be filed in certain cases in supreme court without security,	110
In nature of a <i>quo warranto</i> , and proceedings thereon,	117, 8

I N H E R I T A N C E S,

In certain cases how to descend,	45
----------------------------------	----

I N J U N C T I O N,

To stay proceedings in ejectment for rent how restrained,	143
When to issue,	441

I N N S—See *Taverns*.I N S O L V E N T D E B T O R S—See *Debtors Insolvent*.

I N T E R E S T,

Rate of established,	57, 8
----------------------	-------

I N T E S T A T E ' S E S T A T E S,

How distributed,	538, 9
Distributive shares how recovered at law,	540, 1
See further <i>Administrators</i> ,	

I N T R U S I O N

On lands under pretence of Connecticut title how prevented,	159
---	-----

J O I N T - T E N A N C Y,

To exist in certain cases only,	46, 7
---------------------------------	-------

J O I N T - T E N A N T S,

Proceedings in waste between them,	56
May have actions of account against each other,	95

I S L A N D S,

Jurisdiction of certain islands in New-York harbour ceded to the United States,	169
---	-----

I S S U E S,

When to be sold and monies how disposed of,	91, 2
When to be returned in cases of forcible entry and detainer,	103
What shall be deemed issues,	209
Trial of, where to be had,	375
Of marriage and bastardy how to be tried,	376

J U D G E S of the U N I T E D S T A T E S,

Tenure of their office and compensation,	26
--	----

J U D G E S of the S U P R E M E C O U R T—See
Supreme Court.

JUDGES of COUNTY COURTS,

Tenure of the office of the first judge,	13
First judge to hold no other office,	ibid.
Judges and justices to be commissioned once every three years,	14
May take special bail and admit surrenders of bail in the supreme court,	387
To determine appeals from the commissioners of highways,	589

JUDGMENTS,

Felony to acknowledge them in the name of another,	120
Not to be reversed for rasures, interlineations, &c.	128
Nor after verdict, for mispleading, want of form, &c.	129, 132
On report of clerks how to be entered,	355
Time of signing and filing them to be noted on the record,	388
To be docketed,	ibid.
When to affect land as to purchasers and mortgagees,	388, 9
Docket of them to be interchanged by the clerks of the su- preme court,	389
By confession on judgment-bonds restricted,	ibid.

JUDICIAL POWER of the UNITED STATES,

How vested,	36
Its extent,	27, 33

JURISDICTION,

Of this state how supported in certain cases,	167, 8
Of Montock-Point ceded to the United States,	157
Of Eaton's Neck ceded to the same,	165
Of certain islands in New-York harbour ceded to the same,	169

JURORS and JURY,

Grand jurors not to be on the trial of indictments found by them,	261
Foreman of grand juries may administer oaths,	358
Trial by jury to remain inviolate,	17
Secured in the courts of the United States,	27, 32
Cause in the jury process for circuits,	375
Venue to be awarded of the body of the county,	376
Words to be inserted therein,	377, 8
Number of jurors to be summoned,	377
Qualifications of jurors,	ibid.
How drawn and summoned,	378, 9, 381
By whom and how annual lists of jurors to be returned to the clerk,	380
Tales when and how awarded,	ibid.
Substance of jury process in case of a view,	383
Panels to be annexed to the <i>habeas corpus</i> and <i>distringas</i> ,	381
Fines on jurors for non-attendance how assessed and collected,	381, 2
How to be drawn for at trial,	382
How to be chosen for a view,	383
Jurors on a view to be first sworn on the trial,	ibid.
Struck jurors how obtained,	384, 5
Fees of struck jury by whom paid,	385
When half of the jurors to be aliens,	ibid.

Challenges for the state how tried,	385
Penalty on jurors who are bribed,	ibid.
Embraceors how punished,	386
Jury may find a special verdict,	ibid.
Persons exempted from serving as jurors,	ibid.

J U S T I C E,

Not to be sold, denied or delayed,	48
------------------------------------	----

J U S T I C E S' C O U R T,

Actions cognizable before justices of the peace,	491
Process in such actions,	ibid.
Proceedings on the process by summons,	492
When another justice may try the cause,	492, 3
Warrant in what cases to issue,	ibid.
Summons not to issue against a person out of his county,	493
Parties may go to trial without process,	ibid.
Adjournment when to be made and on what terms,	493, 4
When defendant may set off his demand,	494
Proceedings on a plea of title,	494, 5
Form of conviction under the tavern act and where filed,	495, 6
Jury how to be summoned and chosen,	496, 7
Oath of jurors, witnesses and constable,	497
Judgment to be according to the verdict,	ibid.
No <i>ex parte</i> evidence without consent,	ibid.
Penalty on defaulting jurors and witnesses how recovered,	497, 8
Costs how and in what cases to be given,	498
Execution how to issue,	498, 9
How to be executed,	499, 500
Constable when liable for the amount of the execution,	500
How constables to execute process,	500, 2
When justice may depute a person to serve process,	500
Proceedings against joint debtors,	500, 1
<i>Writs of certiorari</i> how obtained and their effect,	501
Proceedings thereon in the supreme court,	501, 2
Justices when excused or prohibited from holding courts,	502
Fees allowed,	ibid.

J U S T I C E S of the P E A C E,

Their duty concerning private lotteries,	38
Vessels and goods wrecked,	64
Forcible entries and detainers,	101—105
Fires in woods,	147
Apprentices and servants,	186—190
Bastards,	194, 6, 8
In apprehending felons,	219
Under the act for suppressing immorality,	224—8
The act to prevent injury by dogs,	276
The act concerning staves and heading,	282
As conservators of the peace,	304
To take examinations of felons and bind witnesses, &c.	ibid.
To preside at town meetings,	326

Their duty in certain cases to appoint town officers,	327
To certify oaths taken by town officers,	329
In Suffolk county as to Shinnecock Indians,	476
Under the tavern act,	484—490
Under the poor act,	567, 8, 9. 571, 2, 4, 5
When to commit offenders to bridewell or house of correction,	124
Two justices may order lunatics or mad persons confined,	125
How to direct money or effects of disorderly persons to be applied,	ibid.
Excused from attending courts of oyer and terminer,	178
Not liable for indorsing warrants,	197, 219
Actions against them to be brought where the fact was done,	235, 4
In what cases to plead the general issue and recover double costs,	234
To be appointed in each county,	353
Two justices may bail prisoners on suspicion of felony,	304
May try offences under grand larceny,	306
Special justices in New-York when and how to have	
• charge of intestates' effects,	323

K EEPER of the CITY PRISON in NEW-YORK,	
His duty to receive certain persons under process of the United States,	208
To keep all persons committed to his custody,	359
To prevent the use of spiritous liquors in his prison,	361

L AND,	
Grants thereof by the king of Great-Britain when void,	16
Held by freeholders may be alienated,	64
Tenure of lands within this state,	65, 6
Of <i>cestui que use</i> liable to execution,	68
No interest therein to pass but by writing,	79
Measure thereof ascertained,	118
Certain lands in New-York reserved for public uses,	154
Vested in the corporation for public uses,	155
Certain lands on Staten-Island vested in the United States,	171
Devilable by will,	178
Condition of settlement thereof,	300
Extension of that condition,	ibid.
Escheated or forfeited how seized and sold,	301, 311, 2
Made liable to execution for debt,	368
Sale thereof on execution regulated,	392, 3
Not affected by judgments against executors and administrators,	558

L ANDLORDS,	
When and how to recover possession for non-payment of rent,	142

When admitted to defend in ejectment,	145
Their right to distrain not affected by the insolvent act,	438

L A N D - O F F I C E,

Who are commissioners thereof,	297
Powers of the commissioners,	ibid.
Letters patent when and how to issue,	299, 300, 312
Lots reserved for schools,	299
Commissioners to grant lands under navigable rivers,	299, 300
To designate names of towns,	299
To extinguish claims against lands,	300
To sell land warrants for bounty lands,	303
To sell lands escheated,	312
Conditions of settlement annexed to grants,	300
Surveyor general to make maps and the same how disposed of,	297, 8
Sales how to be made by the surveyor general,	298, 9
Proceedings where lands are forfeited for non-settlement,	301, 2

L A N D W A R R A N T S,

Of the state to be sold by the commissioners of the land-office,	302
--	-----

L A R C E N Y,

What offence shall be petit larceny,	254
Grand and petit larceny how punished,	ibid.
Petit larceny how punished by three justices,	305, 6

L A W,

Style of the laws,	14
Of this state declared by the constitution,	15
Act for the amendment of the law,	346
Statutes of England not law in this state,	358
Act repealing all laws within the purview of the revised acts,	619
Act for publishing the laws of this state,	620

L E A T H E R—See *Sole Leather*.

L E G A C I E S.

When payable,	539
Manner of recovering them,	321, 510, 1

L E G I S L A T U R E,

Of this state how constituted,	7
Of the United States how constituted,	19
Of this state to send bills to the council of revision,	7
Not to pass acts of attainder,	17
Not to institute new courts but such as proceed according to the common law,	ibid.
Members to take certain oaths,	28, 401
Privilege of the members as to suits,	133
Meetings thereof regulated,	164, 5
When the members take their seats,	274
Representation how apportioned,	421, 2
Compensation of the members,	533
Compensation of the officers thereof,	534

LESSORS and LESSEES.

Leffors how to discover death of persons on whose lives estates depend,	111, 2, 3
When and how admitted defendants in ejectment,	145
Lessees to have like remedy against grantees as against grantors,	105
New leases good without surrender of under leases,	144
For years may falsify recoveries of their terms,	528

LIBERTIES,

Of gaols how ascertained,	359
---------------------------	-----

LICENCE,

To keep ferries by whom and on what terms granted,	163
To retail spiritous liquors—See <i>Taverns</i> .	

LIEN,

On ships and vessels, when it shall cease,	167
On lands for taxes—See <i>Taxes</i> .	

LIEUTENANT-GOVERNOR,

When, by whom and how chosen,	12, 264—274
When to enter on his office,	274
To be president of the senate,	12
When to administer the government,	ibid.
His duty as a commissioner of the land office,	297—302

LIMITATION,

Of claims and suits against forfeited estates,	162
Of time for bringing error from the supreme court,	185
And appeals from chancery and court of probates,	ibid.
Of prosecutions under the act to suppress immorality,	228
Of suits under the <i>habeas corpus</i> act,	290
Of suits by the state,	562
Of actions for the recovery of land,	ibid.
Of <i>scire facias</i> upon fines and entries into lands,	563
Of personal actions,	563, 4
Of actions and informations on penal statutes,	564, 5
Of criminal prosecutions,	565
Time excepted out of the statute,	ibid.
When the act of limitations applies to quit rents,	612

LOAN OFFICERS,

How appointed,	14
----------------	----

LOTTERIES,

Not authorized by law declared nuisances and indictable,	35
Grand juries to be charged concerning them,	ibid.
Offence in making or promoting them how punished,	36, 7
Conveyances in pursuance of lotteries, void,	37
Penalties how recovered,	ibid.
Informers exempted and rewarded,	36, 7
Duty of justices and other officers concerning them,	38
Lotteries under the authority of the United States not with- in the act,	ibid.

LUMBER,

Inspectors thereof to be appointed,	257
-------------------------------------	-----

Their oath and duty,	257, 8, 9
Exportation thereof regulated,	ibid.
Penalty for shipping lumber not inspected,	258
Compensation to inspectors,	ibid.

L U N A T I C S,

May be confined by order of two justices,	125
Cannot devise lands,	178
Chancellor to have charge of them and their estates,	216
Inventories of their estates how made and filed,	216, 7
When their lands to be sold,	217
How partition of their lands to be made,	ibid.
Their contracts how decreed to be executed,	218
Their estates on their recovery or death how disposed of,	ibid.

M A D P E R S O N S,

May be confined by order of two justices,	125
---	-----

M A G A Z I N E S,

To be established in each county,	17
-----------------------------------	----

M A I M I N G,

Malicious, made felony,	250.
How punished,	253

M A I N T E N A N C E,

Of suits how prevented and punished,	343, 4, 5
--------------------------------------	-----------

M A N D A M U S,

When to be returned and proceedings thereon,	116, 118
--	----------

M A P

Of the state how to be distributed,	308
-------------------------------------	-----

M A R I N E H O S P I T A L—See *Diseases*,

M A R I N E R S,

At sea how to make their wills,	181.
---------------------------------	------

M A R R Y I N G

In the life time of the former husband or wife made felony,	122, 3
Forcible taking and marrying a woman made felony,	235

M A S T E R S i n C H A N C E R Y,

Not to act as counsellors or solicitors in chancery,	221
--	-----

M A S S A C H U S E T T S,

Eastern line of lands ceded to that state made permanent,	202
---	-----

M A Y O R—See *New-York, Albany*.

M A Y O R ' s C O U R T S—See *Courts of Common Pleas*.

M E A L—See *Flour and Meal*.

M E A S U R E

Of land ascertained,	118
----------------------	-----

M E A S U R E R S,

Of grain, &c. their compensation,	230
-----------------------------------	-----

MEASURES—See *Weights and Measures*,

M I L I T I A,

Officers to be appointed during pleasure,	13
To be armed and disciplined,	17
Act of congress establishing an uniform militia,	503—7
Who shall be enrolled in the militia,	503
How to be armed and accoutred,	503, 5
How arranged and officered,	504, 5
Colours, &c. how furnished,	505
Adjutant general and his duty,	ibid.
Rules of discipline,	506
Officers how to take rank,	ibid.
Brigade inspector and his duty,	ibid.
To be arranged into divisions, brigades, regiments and companies,	507
Aids to the commander in chief and their rank,	ibid.
Cavalry how organized and its duties,	507, 517
Artillery how organized and its duties,	508; 9, 517
Rendezvous of the militia,	509
Return thereof how made,	ibid.
Penalties for misconduct under arms how levied,	509, 510
Regulations relative to the parade,	510, 1
To enrolments,	511
Exempted while under arms from arrest,	510
Commissioned officers to meet for improvement,	511
Military uniform and cockade,	511, 2
When and by whom called out on public service,	512, 3
Courts martial how regulated,	513, 4, 5
Compensation to members thereof,	518
• Penalty on non-commissioned officers for neglect,	516
Notice to appear and return thereto when sufficient,	ibid.
Fines when imposed and how collected,	516, 7, 8
How appropriated,	518
Persons exempted from militia duty,	17, 504, 518, 9
Privileges attached to N. York regiment of artillery,	519, 520
Commutation of the Quakers how assessed, collected and applied,	520, 1
Commissaries of military stores and their duty and pay,	521, 2

M I N E S,

Of gold and silver referred to the state,	155
Benefit thereof on what terms granted to the discoverer,	ibid.
What mines belong to the owner of the soil,	152

M I N I S T E R S of the G O S P E L,

Not to hold any office,	17
-------------------------	----

M I S D E M E A N O R S,

When and how compounded by the party injured,	264
On conviction thereof, certain expences may be paid out of the fine,	ibid.

M I S P R I S I O N

Of treason declared,	214
----------------------	-----

M O N E Y,

Interest thereof regulated,	57
Of account to be in dollars and cents,	230
Counterfeiting gold or silver coin made felony,	253
When it may be brought into court pending suit,	349
When to be lodged by courts of chancery and probates in the banks,	443

M O N T O C K - P O I N T,

Jurisdiction thereof ceded to the United States,	157
--	-----

M O R T G A G E S,

Mortgagors and mortgagees when to vote at elections,	274
Proceedings against mortgagors who abscond,	406, 7
Mortgagee liable to account within seven years,	407
On appearance before sale <i>supersedes</i> to issue,	407, 444.
Representatives of the parties included in the above provisions,	407
Sales of mortgaged estates under a decree how made,	443
Monies arising therefrom how applied, <i>ibid.</i>	
When proceedings against mortgagors to stay,	444
How to be proved and registered,	480, 1
The first registered to have priority,	481
When redeemed how discharged,	481, 2
Mortgagors to the state may redeem at any time,	583
On sales of part comptroller may release to the purchaser,	<i>ibid.</i>

M U R D E R,

What shall be deemed murder in certain cases,	60, 1
Punishable with death,	60, 1. 253
Persons who kill when to be acquitted,	61, 2
Affault with intent to murder how punished,	254, 5
Proceedings where a person is stricken or poisoned in one county and dies in another,	260
Persons convicted may be ordered for dissection,	421

M U T U A L D E A L I N G S,

When and how mutual demands may be set off,	347
---	-----

N A T U R A L I Z A T I O N,

Power thereof vested in congress,	22
Aliens how naturalized formerly,	18

N E W - Y O R K, C I T Y of,

Lands therein reserved for public uses,	164
Vested in the corporation for public uses,	155
Certain islands in the harbour ceded to the United States,	169, 170
Keeper of the city prison his duty under U. States process,	208
His general duties as keeper,	358, 9
Recorder authorized to execute the absconding debtor act,	245
And the <i>habeas corpus</i> act,	290
And the insolvent debtor act,	438

Recorder vested with certain powers of a judge of the supreme court,	316
Mayor, recorder and aldermen to have the powers of justices of the peace,	305
Courts of general and special sessions of the peace regulated,	394
On appeals concerning paupers to state the case specially,	572
Of special sessions of the peace and their powers,	394
Of special sessions to try small offences and their powers,	305
Mayor's court by whom and how long to be held,	393
Records thereof how to be expressed,	394
Mayor and recorder when to designate vessels for quarantine,	363
To assist in making rules for the state prison,	414
Mayor to have direction of the state prison guard,	419
Mayor, recorder and aldermen to perform the duty of supervisors under the tax law,	557
Chamberlain when to be appointed administrator and his duty therein,	321, 2
Corporation to be responsible for him therein,	322
To be the city treasurer,	551
Special justices when to take charge of intestates' estates,	323
Common council to make rules concerning fences,	334
To make jury lists,	380
May compound for penalties under the poor act,	580
To appoint and remove commissioners of the alms house,	580, 1
To make rules for the alms house,	581
City prison established,	358
Spiritous liquors when prohibited in the gaol and city prison,	360, 1
Health office and officers—See <i>Diseases</i> .	
Justices of the peace, their duty relative to quarantine and health laws,	366, 373
Streets, yards, &c. order for cleaning them how made and executed,	373
Trades and offensive smells when and how removed,	373
Auctioneers in New-York—See <i>Auction</i> .	
Firemen how attached to the state prison,	417
Beef and pork when owners thereof to give notice to inspector general,	453
Where to be stored during certain months,	454
Where to be repacked and inspected,	455, 458
Artillery regiment how composed and its duties,	508, 9
Privileges attached to it,	520
Masters of vessels to report passengers,	578
When to give bonds of indemnity,	579
Penalty for breaches of duty herein,	578, 9
Bonds given by them and owners of vessels assignable,	580
When liable for citizens imported,	ibid.
Vessels when liable to seizure under the poor law,	580

Penalty on housekeepers for keeping strangers without notice,	579
Penalties under the poor law how recovered and applied,	ibid.
Alms house commissioners and their duty,	581
Monies under the poor act to whom paid and how applied,	ibid.
NEW-YORK, STATE of,	
Jurisdiction thereof how supported against foreign process,	167
Against a pretended title from Connecticut,	159
N I A G A R A,	
Bounds of certain lands of the state there how to be settled,	308
N O N A G E,	
In certain cases no delay of the suit,	89, 90
N O N S U I T,	
Not allowed after verdict,	92
For not proceeding to trial,	353
N O N T E N U R E,	
Writ not to abate by non tenure of parcel,	89
N O T I C E,	
Penalty on tenants not giving notice to landlords of ejectments,	145
Of trial and countermand regulated,	375, 6
To whom to be given,	378
N U I S A N C E,	
Remedy in cases of,	81
Where to be tried,	ibid.
In New-York when and how to be removed,	373
N U N C U P A T I V E W I L L S—See <i>Wills</i> .	

O A T H,

Of allegiance to be taken by electors,	9
Of president of the United States,	25
To support the constitution of the United States of whom required,	28
Of counsellors, attornies and solicitors,	220
Of treasurer of the state,	222
Of trustees under the absconding debtor act,	238
Of inspectors of lumber,	257
Of inspectors of elections,	266
Of clerks of elections,	ibid.
Of electors,	269, 270
Of special messengers sent with certificates of votes,	271
Of persons who determine the result of the election for governor and senators,	274
Of inspector general and cullers of slaves and heading,	279, 280
Of debtors seeking relief from imprisonment,	292
Of town officers,	328, 9
Town officers not required to take any other oaths,	405
Of referees,	349
May be administered by foreman of grand jurors,	352

Of allegiance and abjuration to be taken by all officers,	401
Of governor, lieutenant-governor and president of the senate,	ibid.
Of judicial officers,	ibid.
Of secretary of state,	403
Of sheriffs, coroners and marshals,	ibid.
Of attorney general and district attorneys,	403
Of surrogates,	ibid.
Of registers and clerks,	ibid.
Of all ministerial officers,	ibid.
Persons authorized to administer oaths,	403, 4
Penalty on them for not returning rolls of oaths,	404
Rolls of oaths how disposed of,	ibid.
Form of administering oaths,	405
Persons entitled to affirm,	ibid.
Of auctioneers,	409
Of inspector of flour and meal,	424
Of insolvent debtors,	430
Of inspector general of beef and pork,	452
Of repackers of beef and pork,	455
Of inspectors of seal leather,	483
Of commissioners of excise,	486
Of members and judge advocate of courts martial,	513, 4, 5
Of inspectors of pot and pearl ashes,	522
Of sheriff before he sells lands for quit rent,	611
O F F E N C E S,	
Under grand larceny how tried,	305, 6
O F F I C E R S,	
Civil of the United States removeable by impeachment,	26
Charged with breaches of trust not entitled to privilege as members of the legislature,	133
Of this state when impeached suspended from office,	184
Certain officers how to plead in suits concerning their offices,	234
All officers civil and military to take certain oaths,	401—403
Penalty for acting without taking oaths required by law,	404
Of government their salaries,	532
O F F I C E S,	
Tenure and duration thereof,	13, 14
Penalty for buying or selling offices,	118, 9
Acts of offenders therein how valid,	119
Persons procuring or conveying any pretended title under Connecticut disqualified from office,	160
Persons disqualified from holding any,	289
O N T A R I O C O U N T Y,	
Member of assembly therefor how chosen and returned,	422
Penalty for obstructing the fishery in certain streams,	422, 3
O R D E R S for M O N E Y or G O O D S,	
To forge or counterfeit them made felony,	251
Stealing them declared felony,	346
O T S E G O - L A K E,	
Fishery therein how preserved,	423

OTSEQUETTE PETER—*See Indians.*

OVERSEERS of the POOR,

Their duty as to binding out poor children,	187, 8
Their duty relative to bastards,	195, 8
Actions against them to be laid in the proper county,	233, 4
To plead the general issue and recover double costs,	234
When and by whom chosen,	325
To register notice from strangers under a penalty,	566, 7
Their duty in respect to strangers likely to become chargeable,	567
Penalty for refusing paupers sent by warrant,	569
To deliver to town clerks certificates of paupers,	570
To receive poor persons sent back and to pay charges,	570, 1
How liable for refusal to pay proper expenses,	570, 572
To sue for costs and charges on appeal,	573
When to sell goods seized and receive rents and account therefor,	574
Their duty when persons apply for relief,	575
To register the names of the poor and other matters,	575, 6
When and to whom to account,	576
When to provide work houses for the poor,	576, 7
When to contract for maintaining the poor of other towns,	577
How to account and deliver over books and papers to their successors,	577, 8
To pay sums due their predecessors,	578
May sue their successors,	ibid.
Their duty to maintain poor servants,	616

OVERSEERS of HIGHWAYS—*See Highways.*

OUTLAWRY,

For treason, proceedings thereon,	215, 247, 8
Process therein given in personal actions,	246
How to be proclaimed,	ibid.
Defendant's addition to be given,	249
Necessary, when he may be outlawed,	ibid.
Writs of proclamations how executed,	248
How to be reversed and bail when required,	249
Manner of proceeding to recover debt or damages on outlawry,	ibid.
Effect thereof in personal actions,	250

OYSTER-ISLAND,

Jurisdiction thereof ceded to the United States,	169
--	-----

OYER and TERMINE R—*See Courts.*

PANTHERS,

Reward for killing wolves and panthers,	168
---	-----

PARCENERS,

Proceedings in waste between them,	56
------------------------------------	----

PARDON,

Power of reprieve and pardon vested in the governor,	12
In the president of the United State,	26

May be granted by the governor on conditions,	138
Of treason and murder vested in the legislature,	12
P A R T I T I O N,	
Of lands held by idiots and lunatics how to be made,	217
Between joint tenants, tenants in common and coparceners,	543
Parties to appear and plead,	ibid.
Issues to be tried as in other actions,	543
Judgments therein,	543, 4
Commissioners to be appointed and sworn,	543
Their duty and compensation,	543, 4, 6
When houses and lots may be sold,	544
Costs how recovered,	544, 5
Monies arising from such sales how disposed of,	545
Court to appoint guardians for minors and their duty,	ibid.
Tenants for life and for years may have partition,	546
Courts of common pleas may award partition,	ibid.
Proceedings therein may be removed by <i>certiorari</i> ,	ibid.
Former partitions confirmed,	ibid.
Error may be brought thereon,	547
P A T E N T S—See <i>Land Office</i> .	
P A U P E R S,	
Having cause of action may sue <i>gratis</i> ,	357
P E D L A R S,	
How restrained and punished,	41
P E N A L A C T I O N S—See <i>Informations</i> .	
P E O P L E,	
All authority derived from them,	7
Rights secured,	10, 47
P E R J U R Y,	
Perjury and subornation of perjury defined,	312
Convicts thereof disqualified from being witnesses,	ibid.
Substance of the indictment,	312, 3
Prosecutions may be ordered by the courts,	314
Punishable in the state prison,	256
P E S T I L E N T I A L D I S E A S E S—See <i>Diseases</i> .	
P E T I T L A R C E N Y—See <i>Larceny</i> .	
P H Y S I C and S U R G E R Y,	
Practice thereof regulated,	449—452
Penalties for counterfeiting permit or licence,	452
P I L O T S,	
Their duty relative to vessels subject to quarantine,	364, 5. 370
Penalties for breach of duty,	370
P L E A D I N G S,	
Penalty for false pleading in assise,	82
Tenant in certain actions may plead that the plaintiff is not next heir,	89
To be in English,	128
Mistakes in pleading when and how to be amended,	127—132
Recaption on fresh pursuit to be on oath,	213

By sheriffs and other officers in suits concerning their office,	233, 4
In actions founded on a distress or acts done by authority of a statute,	234
In suits on behalf of the state,	235, 555, 6. 587
Heirs and devisees liable for false pleading,	245, 6
Foreign pleas by traitors and felons how tried,	261
Time of declaring against prisoners and declarations how to be served,	295, 6
In suits against town officers,	329, 330
Defendants in all cases may plead the general issue with notice,	346
In cases of mutual dealings,	347
In debt on bonds and in <i>scire facias</i> on judgments,	348, 9
On bonds for the performance of covenants,	349, 350, 1
Defendants may plead several pleas with leave,	351
In trespass <i>quare clausum fregit</i> ,	357
Dilatory pleas to be sworn to,	ibid.
In suits against county treasurers,	553

P O I S O N I N G,

Declared to be murder,	60
------------------------	----

P O L I C E O F F I C E in N E W - Y O R K,

Recognizances to be returned there,	305
-------------------------------------	-----

P O O R,

Each city and town to support their own poor,	566
Settlement how gained,	ibid.
Strangers when to give notice to the overseers,	ibid.
When and how they may be removed,	567, 8
Penalty for entertaining strangers without giving notice,	568
When persons are bound to indemnify the town against strangers,	ibid.
Charges of transportation how paid,	569
Persons removed and returning how to be punished,	ibid.
Paupers may remove and reside any where with a certificate,	570
Certificated persons becoming chargeable to be sent back,	ibid.
How a certificated person may gain a settlement,	570, 1
How charges of maintaining and removing a certificated person to be borne,	471
How poor persons unable to be sent back to be supported,	ibid.
Persons aggrieved may appeal,	572
Notice of appeal requisite,	ibid.
Proceedings on appeal,	573
Parents and children mutually to support each other,	573, 4
Estates of persons absconding to be seized for the support of their wives and children,	574
How monies for the support of the poor to be raised,	574, 5
When bound to work in work houses,	576, 7
How such houses to be provided,	ibid.
Maintained by a county or several towns to continue so maintained,	581
Poor servants how maintained at the expence of the state,	616, 7
- Regulations concerning the poor in New-York—See <i>New-York, city of</i> .	

Duty of the overseers of the poor—See *Overseers of the Poor*.

P O R K—See *Beef and Pork*.

POSTEA,

By whom to be made and returned, 377

POSTHUMOUS CHILDREN,

To inherit as if born in their fathers life time, 46

P O T and P E A R L A S H E S,

Inspectors thereof to be appointed, 522

Their oath, duty and powers, 522—524

To appoint deputies and be answerable for them, 524

Size and quality of the casks, 523

Fees of the inspectors, *ibid.*

Penalties for breaches of this act and how collected and applied, 523, 4

Where to be inspected, 524

P O U N D S,

Where and how to be made and maintained, 334

Pound masters how chosen and their duty and fees, 325, 334

Beasts distrained to be put in the open pound, 134

P R E S I D E N T of the U N I T E D S T A T E S,

To approve or object to bills, 22

Vested with the executive power of the Union, 24

Duration of his office, *ibid.*

Manner of electing him, *ibid.*

His qualifications, 25

His compensation and oath, *ibid.*

His powers and duties, 26

Vacancy in the office of president and vice-president may be supplied by law, 25

Removeable by impeachment, 26

Electors of, how appointed and when and where to meet, 161

P R E S I D E N T of the S E N A T E,

In what cases to administer the government, 12

His duty in cancelling certain bills of credit and certificates, 169

P R E T E N C E S—See *False Pretences*.

P R I E S T S,

Not to hold any office, 17

P R I S O N—See *State Prison*.

P R I S O N E R S,

In what manner to be treated by sheriffs and gaolers, 211

How to be kept on execution, 212

In execution and brought up on *habeas corpus*, to be remanded, *ibid.*

Aiding any prisoner for felony to escape how punished, 256, 7

Refusing to plead deemed pleading not guilty, 260

Not to be asked how to be tried, *ibid.*

May be relieved on *habeas corpus* in criminal cases, 286, 7

When not entitled to such writ, 287, 289

If set at large not to be re-imprisoned for the same cause,	288
When entitled to bail on being indicted,	ibid.
To discharge on not being tried,	ibid.
Not to be removed but by legal process	288, 9
Nor after court of <i>oyer and terminer</i> proclaimed,	289
Not to be sent out of the state,	ibid.
Remedy and penalty therefor,	ibid.
When not to be imprisoned more than thirty days,	290
In execution when and how relieved on their petition,	290—296
When and how on application by their creditors,	432
Time and manner of declaring against them,	295, 6
Time of charging them in execution,	296
When entitled to the liberties of gaols,	350

P R I V I L E G E

Of the members of the legislature in civil suits,	133
Not to extend to officers charged with breach of trust,	ibid.
Plaintiff delayed by privilege not barred by limitation,	ibid.
Of members of Congress,	21

P R O B A T E S—See *Court of Probates.*

P R O C E E D I N G S,

In criminal cases regulated,	259
------------------------------	-----

P R O C E S S,

To run in the name of the people and how tested,	14
In assize and other actions regulated,	80—92
Teste and return thereof in pleas of land,	90, 1
Persons executing the same without authority how punished,	167, 8
For courts of <i>oyer and terminer</i> by whom issued and how tested,	176
May be directed into any county,	177
To apprehend offenders in another county how indorsed,	219
Not to be served on Sunday,	225
Teste and return thereof in the supreme court,	315
Issuing thereof in chancery regulated,	441

P R O C L A M A T I O N,

Writs of in outlawry how executed,	248
------------------------------------	-----

P R O M I S E S,

In what cases to be in writing,	79
---------------------------------	----

P R O M I S S O R Y N O T E S,

Negotiable and like inland bills,	229
To forge or counterfeit them made felony,	251
Stealing them made felony,	345

P R O S E C U T O R,

For public offences when and how allowed his expences,	263
May settle with defendant in certain cases,	264

P U R C H A S E R S,

Conveyances to defraud them void,	76
Grants of land with power of revocation void against them,	77

Q U A K E R S,

Excused from military service and to pay an equivalent,	17
Equivalent how assessed and collected,	520, 1
When excused from acting as assessors or collectors,	350
When excused from acting as jurors,	386

Q U A R A N T I N E—See' Diseases,

Q U I T R E N T S,

To be paid in current money,	605
Certain of them remitted,	606
Arrears thereof on certain farms remitted on condition,	606, 7
How persons may commute for the same,	607
How to be assessed among several owners,	607, 8
Compensation to certain assessors and collectors,	608
Comptroller to authorise distefs for quit rent,	608, 9
How land may be sold for arrears,	609, 610
Process for sale of lands to be recorded,	611
Monies arising from such sales how disposed of,	ibid.
Mistakes relative to payments how rectified,	611, 2
Expences in executing this act how paid,	612
When barred by the statute of limitations,	ibid

Q U O W A R R A N T O,

Proceedings on informations in nature of quo warranto,	117, 8
--	--------

R A P E,

Ravisher disabled to hold any inheritance or joint purchase,	54
Woman consenting disabled to hold any inheritance, dower, &c. <i>ibid.</i>	
Declared to be felony,	235
How punished,	253
Assault with intent to commit a rape how punished,	254, 5

R E C E I P T S,

To forge or counterfeit them made felony,	251
---	-----

R E C E I V E R S

Of stolen goods how punished,	261
-------------------------------	-----

R E C O G N I T O R S

Of the grand assize, their qualifications and how chosen and summoned,	43, 4
--	-------

R E C O G N I Z A N C E S,

Felony to acknowledge them in the name of another,	120, 1
Not to affect lands against purchasers,	389

R E C O R D E R—See *New-York, Albany.*

R E C O R D S,

And judicial proceedings to receive full faith and credit in the several states,	27
Stealing or avoiding them made felony,	121

To be written in English,	128
To forge or counterfeit them made felony,	251
When removeable from New-York to Albany,	315

R E C O V E R I E S,

Proceedings therein to be inrolled,	73
Not to be reverfed for want of form,	74
Nor by error unless brought with in five years,	ibid.
When not affected by the act to prevent frauds,	78
Felony to suffer them in the name of another,	120, 1
By covin against wife or husband and wife when void,	525
By covin against tenants for life void,	527
May be falsified by lessees,	528
Recoverers to have remedy for rent and waste,	ibid.

R E D I S S E I S I N,

Proceedings in cafes of,	87
--------------------------	----

R E F E R E N C E,

When causes may be referred and proceedings thereon,	347, 8
--	--------

R E G I S T E R,

In chancery how appointed,	14
Neither he or his deputies to act as counsellors or solicitors,	221
Form of his oath,	403

R E L I G I O N,

Free exercise thereof allowed;	16, 17
--------------------------------	--------

R E L I G I O U S S O C I E T I E S,

Of the protestant episcopal church, how incorporated and powers thereof,	336, 7
Of the protestant Dutch church how incorporated,	338
Other religious societies how incorporated,	338, 9
Powers of trustees of churches and their duration in office,	339—341
Who may vote for trustees,	341
Trustees how to be elected,	336—341
Salaries of ministers how ascertained and paid,	342
When and how to account,	ibid.
Amount of their authorized income,	340, 2, 3
Former corporations confirmed,	343
How they may be re-incorporated,	ibid.
Rights of the Methodist episcopal church in New-York,	ibid.

R E L I G I O U S T E S T,

Not required under the United States,	29
---------------------------------------	----

R E N T S,

Affix of rent of tenements in different counties,	85
Distress for rent may be appraised and sold,	135
What may be distrained for rent and when,	135, 6, 139
Where impounded and sold,	136
Goods not liable to execution till one year's rent paid,	137
Goods carried off may be seized for rent,	ibid.
Penalty on tenants removing goods to prevent distress,	138
In what cases landlords may break open houses,	ibid.
Debt may be brought for rent on leases for life,	139

How recoverable by executors and administrators and by husbands,	139, 140
How recoverable by persons entitled for the life of others,	143
Tenants holding over to pay double the value,	141
Tenants refusing to quit according to notice to pay double rent, <i>ibid.</i>	
Proceedings to recover possession for non-payment of rent,	142, 3, 4
When such recovery not to bar a mortgagee,	143
Lessor how far accountable for profits,	<i>ibid.</i>
When to be apportioned,	144
New leases good without surrender of under leases,	<i>ibid.</i>
Reasonable satisfaction to be recovered when the demise is not by deed,	146

R E P L E V I N,

Proceedings therein,	96
Form of the plaint and writ,	96, 7
Writ of second deliverance,	97
Sheriff's duty therein,	97, 8, 9
Bonds therein may be assigned,	99
Avowry therein how to be made,	<i>ibid.</i>
Pleas therein,	<i>ibid.</i>
In what cases defendant to have a writ of inquiry,	100, 1
When not allowed,	98, 101

R E P R E S E N T A T I V E S of the UNITED STATES,

House of, to choose its speaker and to impeach,	21
Its powers and manner of proceeding,	<i>ibid.</i>
Its power to adjourn limited,	<i>ibid.</i>
Members how long and by whom chosen,	19
Their qualifications,	<i>ibid.</i>
How apportioned among the states,	<i>ibid.</i>
Their number limited,	<i>ibid.</i>
Their privileges,	21
Vacancies how supplied,	20
Their disability to hold certain offices,	21
Their election within this state regulated,	283

R E P R I E V E—See *Pardon.*

R E S T I T U T I O N,

Of possession in what cases to be made,	104
Of stolen goods when and how to be made,	262

R E T A K I N G,

On fresh pursuit how to be plead,	213
-----------------------------------	-----

R E V E R S I O N S,

Grantees thereof to have like remedy as grantors,	105
Lessees to have like remedy against grantees as against grantors, <i>ibid.</i>	

R E V E R S I O N E R S and R E M A I N D E R - M E N,

How to discover death of persons on whose life estates depend,	111, 2, 3
Parties evicted how redressed on proof that such persons are living,	112, 114
May be admitted to defend their rights,	526

May have writs of error on judgments against tenants,	526, 7
Not barred by recovery against tenant,	ibid.

RICHMOND COUNTY,

Tax on dogs therein how levied,	277
Damages done by them how recovered,	278

R I G H T,

Trial on writs of right regulated,	42, 43
Rights of the people of this state declared and secured,	10, 47
Of the people of the United States declared and secured.	32

R O A D S—See *Highways*.

R O B B E R Y,

How punished,	253
Affault with intent to rob how punished,	254, 5
Party robbed when to be restored to his goods,	262

ROCKLAND COUNTY,

A certain road and bridge therein how kept in repair,	604
---	-----

S A L A R I E S,

Of the permanent officers of government,	532, 3
In what manner to be paid,	533
Revenue appointed for the same,	535
Of the comptroller,	588
Of the judge of probates,	621

S A L E S,

Of land on execution regulated,	392, 3
At auction—See <i>Auction</i> .	
By mortgages under a power how regulated,	482

S C H O H A R I E - B R I D G E,

Commissioners relative thereto appointed,	603
---	-----

S C I R E F A C I A S,

When to issue,	92, 347, 348, 350, 537
How to be served to charge special bail,	449

S E A L,

Great and privy seals by whom kept and how applied,	203
Of courts—See <i>the respective Courts</i> .	

S E C R E T A R Y of the S T A T E,

Annually to meet certain officers to destroy bills of credit,	169
To attend the sessions of the legislature to receive laws,	202
Clerk of the council of appointment,	ibid.
To issue commissions and superfeatas and transmit them,	203, 4
When to give notice of a superfeatas,	203
To notify treasurer of his appointment,	222
His duty in respect to elections,	265, 271, 2, 3, 284
Penalty for misconduct therein,	274
His duty as a commissioner of the land office,	297—302

To act as secretary to the commissioners thereof,	297
His duty in respect to lands forfeited for non-settlement,	301
To furnish surveyor general with papers,	309
Form of his oath,	403
To furnish information to inspector general of beef and pork,	461
His duty as trustee for the posterity of Peter Osequette,	477
His duty as to recording deeds,	479, 480
His salary,	533
His further allowance,	535
His office where to be kept,	ibid.
To account for fees received,	ibid.
Deeds, except mortgages, to be deposited in his office,	584

SENATE of the UNITED STATES,

Of whom composed,	20
Its powers, privileges and manner of proceeding,	20, 21
Its power to adjourn limited,	21
Senators how long to serve,	29
Vacancies how supplied,	ibid.
Senators how clasied,	ibid.
Their qualifications,	20, 21
And privileges,	21
Disability to hold certain offices,	ibid.
When and how chosen and evidence thereof,	190

SENATE of this STATE,

Number thereof,	9, 10, 11, 421, 623
Term of election and rotation,	10
Manner of choosing them,	10, 264—274
How apportioned,	10, 421
Judges of their own members,	10
Power to adjourn limited,	11
Journals how kept,	ibid.
Doors to be open,	ibid.
Conferences between the senate and assembly,	ibid.
Lieutenant-governor to be president thereof,	12
In what cases to choose a president,	ibid.
To enter objections of the council on their minutes,	7
When to enter on their office,	274

SERVANTS,

Felony in them to embezzle their masters' goods,	122
Penalty on dealing with or selling liquor to them,	489, 618
For servants born of slaves—See <i>Slaves</i> .	
See further <i>Apprentices and Servants</i> .	

SESSIONS—See *Courts of General and Special Sessions*.

SET-OFFS,

In what cases and how allowed,	347
--------------------------------	-----

SETTLEMENT

Of lands, condition thereof how limited,	300
Of persons—See <i>Poor</i> .	

SHERIFFS,

To be annually appointed,	13
---------------------------	----

Not to be appointed more than four years successively,	13
To hold no other office,	ibid.
Penalty for disseising any person without writ,	83
Their duty in cases of replevin,	96—99
In cases of forcible entry and detainer,	102, 2
Concerning vessels and goods cast on shore,	62—64
In respect to private lotteries,	38
Not to remove goods on execution till rent paid,	137
To make returns to and attend courts of oyer and terminer,	175, 6
To be substantial freeholders,	204
Form of their commission and writ of discharge,	ibid.
Amount and form of their security,	205
Sureties to be sworn, and their competency how ascertained,	205, 6
Time allowed to give security,	206
How long to continue in office,	ibid.
Under sheriffs to be appointed and their duty,	ibid.
Proceedings on sheriffs' bonds,	207, 8
To have the custody of gaols,	208
Their duty to receive and keep prisoners under process of the United States,	ibid.
Compensation therefor,	209
Penalty for extortion,	ibid.
Their duty as to the receipt and return of writs and issues,	ibid.
Remedy for their default therein,	ibid.
Their duty in case of resistance on executions,	ibid.
To keep safely felons and other prisoners,	210
In what cases and how to take bail bonds,	ibid.
Answerable according to their return of process,	ibid.
When not to hold to bail,	ibid.
Appearance of defendant in such cases to be indorsed,	210, 211
In what manner to treat prisoners,	211
Penalty for offences therein,	211, 2
To keep safely prisoners in execution,	212
When liable for escapes,	95, 212, 3
Penalty for conniving at escapes,	212, 3
To deliver copy of declarations to prisoners,	213
To make fresh pursuit after felons,	218
When to sue for fees,	221
They, their under sheriffs and clerks not to act as coun- sellors, attornies or solicitors,	ibid.
Not to serve process on Sunday,	225
Actions against them where to be brought,	233, 4
When to plead the general issue and recover double costs,	234
Their duty on attachment against absconding and absent debtors,	236
On process of outlawry,	246, 7
When to pay expences of prosecution out of fines,	264
Their duty in respect to elections,	265, 272, 285
Penalty for mal-conduct therein,	274
Their duty on <i>habeas corpus</i> in criminal cases,	286
Penalty for disobeying the writ,	ibid.
Their duty on process for seizing lands forfeited for non-set- tlement,	301, 2

To return jurors to the general sessions,	303
Their duty on process for seizing lands escheated,	312
To execute process from court of probates or surrogates,	321
To grant prisoners the liberty of gaols on security,	360
Of New-York and Albany to prevent sale of liquors in gaol,	361
Their duty in removing nuisances in New-York,	373
To return process to circuits and sittings,	376
Their duty on jury process,	378, 381
To pay clerk's fees for impanneling of jurors,	380
To furnish copy of pannel when required,	381
To notify defaulting jurors,	382
To indorse on executions the time of delivery,	390
Not to be purchasers on executions,	393
Form of oath to be taken by them,	402
Their duty on executions against land,	392, 3
On sales of lands of mortgagors who abscond,	406
On conveying convicts to the state prison,	415, 6
Fees therefor,	415
On service of exchequer process,	446
On executions against the body,	449
On warrants under the tax law,	552
On process from exchequer to sell lands for quit rent,	611
When and how to account to the exchequer,	146, 7
How liable for neglect of duty under the tax law,	553
Their oath to be taken before they sell lands for quit rent,	611
How to dispose of monies arising from sales for quit rent,	ibid.

SHINECOCK INDIANS,—See *Indians*.

SHIP S

And other vessels when and how liable to arrest,	166
--	-----

SITTINGS—See *Circuit Courts and Sittings*.

SLAVES,

Or persons held to service escaping to another state to be delivered up,	27
Who shall be slaves,	612
How they may be manumitted,	ibid.
Owner when and how to be discharged from maintaining them,	613
Certain manumissions confirmed,	ibid.
Importation of them prohibited,	613, 4
Penalty for selling imported slaves,	614
Imported to be free,	ibid.
Exportation of slaves and servants prohibited,	ibid.
Exported to be free,	615
Travelling to and from this state with slaves permitted,	ibid.
Persons removing may take certain slaves,	ibid.
Penalty on masters of vessels exporting slaves,	ibid.
Children born of slaves after a certain date made free,	615
To continue servants to a certain age,	615, 6
Their name, age and sex to be registered,	616
How the owner may abandon them,	ibid.
How maintained at the expence of the state,	ibid.

Certain manumitted slaves to be maintained by the state,	607
Penalty for suffering slaves and servants to beg,	ibid.
For selling aged or infirm slaves by collusion,	ibid.
For harbouring slaves and servants,	ibid.
For trading with or selling liquor to them,	618
Owners answerable for trespasses of slaves and servants,	ibid.
Striking white persons how punished,	ibid.
When good witnesses,	ibid.
When liable to be transported,	618, 9

S O A L - L E A T H E R,

Inspectors thereof to be appointed in the several cities,	483
Their oath, duty and fees,	483, 4
Penalties for breaches of this act,	ibid.

S O L D I E R S,

Not to be billeted on citizens without their consent,	49
In service how to make their wills,	181

S O L I C I T O R S,

How appointed, licensed and regulated,	14
What persons to be admitted and their oath,	220
How punished for malpractice,	220, 1
When to sue for fees,	221
Persons prohibited from practice,	ibid.

S P E A K E R of the A S S E M B L Y,

How to be chosen,	9
His duty in cancelling certain bills of credit,	169
His duty as a commissioner of the land office,	297—302

S T A B B I N G,

Declared to be murder,	60
------------------------	----

S T A T E N - I S L A N D,

Title of certain lands thereon vested in the United States,	171, 2
---	--------

S T A T E P R I S O N,

Convicts therein when liable under the absconding debtor act,	244, 5
Crimes punishable with imprisonment therein for life,	253, 4
With imprisonment for years,	254—257
No person to be imprisoned therein for less than a year,	255
Breaking and escaping therefrom how punished,	255, 6
Breaking and escaping therefrom and thereafter committing felony punished with death,	255
Persons adjudged to imprisonment for life civilly dead,	256
Persons attempting escapes or aiding escapes how punished,	ibid.
Inspectors how appointed,	414
When to meet,	ibid.
To make rules and appoint visiting inspectors,	ibid.
To have charge of the prison and appoint keepers,	ibid.
Their duty as to health of the convicts,	417
To employ the convicts and keep accounts for them,	415
Majority of them a quorum,	417
To account annually,	417, 8
Duty and salaries of the keepers,	414

Salary of the agent,	418
Expence of conveying and keeping convicts paid by the state,	415
Convicts how maintained,	416, 418
How punished for disorderly behaviour,	416
Penalty for selling liquor in the prison,	ibid.
Persons authorised to visit the prison,	417
Duty of firemen attached to the prison,	ibid.
Boots and shoes made there to be stamped,	418
Penalty for counterfeiting such stamps or selling without them,	ibid.
Communication with the convicts how prevented,	ibid.
Guard how established and regulated,	419, 420

S T A T E S,

Limitation to the powers of the several states,	24
New states may be admitted by congress,	28
Republican form of government guaranteed to each,	ibid.
Protected by the United States against invasion and violence,	ibid.

S T A T U T E S,

Of England not law in this state,	358
Act for publishing a new edition of them,	620

S T A V E S and H E A D I N G,

Merchantable described,	278
Inspector general appointed in New-York,	279
His powers and duty,	279, 280, 283
Cullers, their numbers, oath and duty,	279, 280, 282
Penalty on inspectors and cullers for trading in slaves,	280
Compensation to inspectors and cullers,	280, 1
Disputes about culling how settled,	281
Penalty for shipping slaves not inspected or condemned,	282, 3
Forfeitures how applied,	283

S T E A L I N G,

How punished,	253, 4
Securities for payment of money made felony,	346

S T E U B E N C O U N T Y,

Member of assembly therefor how chosen and returned,	422
--	-----

S T O C K - J O B B I N G,

Sales of stock at auction prohibited,	412
Contracts declared void,	413

S T O C K B R I D G E I N D I A N S—See *Indians*.

S T O L E N G O O D S,

Buyer and receiver thereof how punished,	254, 5. 261
--	-------------

S T R A Y S,

Cattle and sheep strayed how secured and fold,	149
Penalty for not giving notice,	150
Money from sales thereof how appropriated,	ibid.

S U B O R N A T I O N of P E R J U R Y—See *Perjury*.

S U B P Œ N A,

From courts of common pleas and sessions how and where to issue,	399
--	-----

S U M M O N S,

In real actions how proclaimed, 91

S U N D A Y,

Penalty for travelling, labouring or sporting, 224
 No goods or liquor to be sold on that day, 224, 5
 Civil procefs not to be served, 223
 Penalties how levied and applied, 225, 7
 Form of conviction and the fame not removeable, 227
 Persons sued for executing this act to plead the general
 issue and have treble costs, 228
 Prosecutions to be within twenty days, *ibid*:

S U P E R S E D E A S,

When execution is superfed by writ of error, 200
 From the council of appointment how sent and made public, 203
 To attachments against absconding debtors how obtained, 237, 242
 Prisoners when entitled to be superfed, 296
 To stay sales against mortgagors when to issue, 407

S U P E R V I S O R S,

Their duty in respect to fires in woods, 147
 To grant a reward for killing wolves and panthers, 168
 To raise money to pay poor witnesses and prosecutors, 263
 To be inspectors of elections and their duty therein, 264—276
 To pay clerks for services under the election law, 272
 To furnish surveyor general with surveys of towns, 309
 When and by whom chosen, 14, 325
 To make lists of jurors, 380
 Their duty as commissioners of excise, 484—490
 Their duty as to taxes on Quakers in lieu of military service, 520
 Their duty under the tax law, 549, 550
 Their compensation under the tax law how made, 556
 When and where to meet, and allow and raise county charges, 558
 To audit expences of town officers, *ibid*.
 How to apportion county charges, *ibid*.
 How to cause the same to be levied and applied, *ibid*.
 To appoint a clerk and county treasurer, 14, 559
 When to put treasurer's bond in suit, 560
 When and how to proceed on business, 561
 Conveyances of land to them valid, *ibid*.
 Their compensation, *ibid*.
 Penalties for neglect of duty how recovered and applied, *ibid*.
 To cause court houses and gaols to be repaired, *ibid*.
 To raise sufficient poor money, 575
 To examine and audit accounts of overseers of the poor, 576
 To raise annually necessary expences for roads and bridges, 599
 When to cause bridges to be erected or repaired at the
 county expence, *ibid*.

S U P R E M E C O U R T of the U N I T E D S T A T E S,
 Jurisdiction thereof, 27

S U P R E M E C O U R T of this S T A T E,

To send felons into the proper counties, 261

Terms thereof,	314
Teste and return of process,	315
Certain proceedings therein how regulated,	ibid.
Seals thereof,	316
To direct records to be removed from New-York to Albany,	315
How to proceed on <i>certiorari</i> , from justices' judgments,	501, 2
To appoint their clerks,	13
Circuits and sittings,	172, 3
Commissioners to take affidavits,	316
Clerk to the court of exchequer,	443
Judges to hold their offices during good behaviour,	13
To hold no other office,	ibid.
To hold circuits and sittings,	172, 3
To preside at courts of oyer and terminer,	175, 7
Their duty under the election law,	273
Penalty for misconduct therein,	274
Their duty as to representatives in congress,	284
To meet with the inspectors of the state prison,	414
May order attorney general to attend courts of oyer and terminer,	462
Their salaries,	532
Not to receive fees,	533
Junior justice to hold court of exchequer,	444, 5

S U R G E R Y—See *Physic and Surgery*.

S U R R E N D E R,

Of new leases good without surrender of under leases,	144
Of bail in supreme court how made,	387

S U R R O G A T E S,

To be appointed in each county,	317
Their powers,	ibid.
Their seal,	318
Administration to whom, when and how granted,	318, 322
Their records how kept and effect thereof,	319
To receive on oath the papers from their predecessors,	ibid.
Parties to be cited and heard on a <i>caveat</i> entered,	ibid.
Bond to be given by administrators,	ibid.
Bond when to be prosecuted,	320
To order administrators to account and decree distribution,	ibid.
Their power in case of legacies,	321
How to enforce their decrees,	ibid.
If made executors they may renounce and prove the will,	ibid.
When and how to order real estates sold,	323, 4
How to distribute the proceeds of such sales,	324
When to appoint guardians to infants,	325
Appeals from their decrees when to be made,	ibid.
Form of their oaths,	403

S U R V E Y O R G E N E R A L,

How to lay out unappropriated lands,	297
How to sell the same under orders from the land office,	298, 9
His power to extinguish claims against lands,	300
When to inquire into the non-settlement of lands,	301

How appointed,	307
How to sell and convey forfeited estates,	307—309
Conveyances by him how to operate,	307, 8
To administer oaths in certain cases,	308
How to distribute the map of the state,	ibid.
To establish the boundaries of the Niagara lands,	ibid.
To sell certain lands in the Royal-Grant,	308, 9
To account for public money,	309
His fees,	ibid.
Secretary of state to furnish him with documents,	309, 310
To sell lands escheated for want of heirs,	312

S W E A R I N G,

Penalties therefor how recovered and applied,	225, 7
How punished,	225, 6
Form of conviction and not removeable,	227
Prosecution to be within twenty days,	228
Persons sued for executing the act to plead the general issue and have double costs,	ibid.

T A V E R N S,

Penalty for selling liquors on Sunday,	225
Commissioners of excise declared,	484, 5
In the several towns to take an oath and record the same,	485
To fix the sum for each licence and account therefor,	486, 7
How and to whom licences to be granted,	486
Compensation to the commissioner in New-York,	487
Retailers of liquor to enter into recognizance,	ibid.
Penalty for selling without licence and recognizance,	488
No gaming permitted therein,	ibid.
What accommodations required,	ibid.
When storekeepers to take licence to keep tavern,	ibid.
Penalty for selling liquors to or receiving goods of servants,	489
Innkeepers not to sell or trust beyond a certain sum,	ibid.
Penalty for taking any security therefor,	489, 490
To have a sign,	490
Penalties how recovered and applied,	485, 490
Breaches of this act made misdemeanors,	490
Form of convictions under this act,	495

T A X E S,

Direct taxes of the United States how apportioned,	19
Not to be levied without the assent of the legislature,	48
Of farms divided by a town line where paid,	335
On Quakers in lieu of military service,	520, 1
To be levied on a certain valuation,	547
How such valuation may be altered,	ibid.
Duty of the assessors of taxes,	547—549
Of supervisors in estimating taxes and issuing war- rants,	549, 550

Duty of supervisors in sending names of delinquents to the comptroller,	550
Penalty of assessors for neglect of duty,	ibid.
Town clerk to furnish names of assessors and collectors,	ibid.
County treasurer, his duty under this act,	550, 553
Any one assessor to act in default of the rest,	557
Duty of the collectors,	ibid.
Taxes on real estates to be paid by the possessors and to be a lien,	ibid.
Taxes on personal estates how preserved,	ibid.
Collector how discharged from sums he cannot collect,	552
How responsible for deficiencies,	ibid.
Sheriff's duty and how liable for neglect therein,	552, 553
County treasurer how answerable and where to dispose of monies raised,	ibid.
Deficiencies on personal estates to be levied anew,	554
Deficiencies on real estates made a lien and put on interest,	555
Real estates when and how sold for taxes,	ibid.
How paid to the treasurer and discharged,	556
Compensation to supervisors and assessors,	ibid.
Certain property exempted from taxation,	ibid.
Certain property exempted for a limited time,	557
Offences against the tax law indictable,	ibid.
Duty of the comptroller under this act—See <i>Comptroller</i> .	

T E N A N T S,

Liable to actions for waste,	55
In dower, by the curtesy and for life to recover lands lost by default,	85
Giving notice to quit and refusing, to pay double rent,	141
Holding over to pay double the yearly value,	ibid.
To give landlords notice of declarations in ejectment,	145

T E N A N T S in C O M M O N,

Proceedings in waste between them,	56
May have account against each other,	95

T E N D E R,

Of amends for irregularity in distress allowed,	137
When pleadable in trespass <i>quare clausum frigit</i> ,	357

T E N U R E S,

By knight's service abolished,	64, 5
Of all estates held before 4th July, 1776, to be by soccage,	ibid.
Of lands granted by the state to be allodial,	66

T I T L E S,

Title of certain land on Staten-Island vested in the U. States,	171
Buying or selling pretended titles how punished,	345

T O W N M E E T I N G S,

When and by whom to be held and officers to be chosen,	325—327
Special when and how to be held,	326, 332
Qualifications of voters,	326, 7
May vote certain rules and regulations,	331, 2

May raise money for certain purposes,	333
In Essex and Clinton counties vested with special powers,	335
Trustees of certain towns when chosen,	ibid.
To determine the poor money to be raised,	374
May agree to build work houses for the poor,	376

T O W N O F F I C E R S,

How and when chosen,	14, 325
If omitted to be chosen how appointed by justices,	327
To take an oath and forms thereof,	327, 8, 9
Oaths by whom transmitted to the town clerk,	329
What is evidence of refusal to serve,	ibid.
Penalty for refusing to serve or acting before being qualified,	329, 330
Town clerk when chosen and his duties,	325, 326, 332
His duty as inspector of elections,	264—274
Penalty for not delivering papers to his successor,	330
To notify special town meetings,	332
To assist in making jury lists,	380
To send annually a list of jurors to the county clerk,	ibid.
To furnish annually the name of assessors and collectors,	550
To file and record certificates of paupers,	570

T O W N S,

Not to be divided without previous notice,	335
Trustees of certain towns when chosen,	ibid.
Each town to keep a sufficient pound,	334

T R E A S O N,

Against the United States defined,	27
Evidence required and punishment limited,	ibid.
Against this state and misprision of treason defined,	214
Trial to be according to common law,	ibid.
Privileges of persons indicted,	214, 5
Evidence requisite to convict,	ibid.
Treason out of the state where tried,	215
Peremptory challenges to what number allowed,	ibid.
Proceedings on outlawry for treason,	215, 247, 8
When not to be quashed nor judgment arrested,	215, 6
Forfeiture for treason,	216
Effects of attainder thereof restrained,	ibid.
Punishable with death,	253
Prisoner standing mute how tried,	259
Foreign pleas therein how tried,	261

T R E A S U R E R of the S T A T E,

How appointed,	13
To give security and take an oath,	222
To keep his office in Albany,	223
Bank of Albany to execute the office in case of vacancy,	ibid.
Annually to report to the legislature,	ibid.
To deposit monies in the banks of New-York and Albany,	ibid.

His bond when discharged,	223
His duty in respect to elections,	272, 3. 284
Penalty for misconduct therein,	274
His duty as a commissioner of the land office,	297—302
As trustee for the posterity of Peter Otsequette,	477
His salary,	533
His duty as to the receipt and payment of taxes,	556
Not to pay monies but on the order of the comptroller,	583
All monies to be paid to him,	584
To receive certain dividends on bank and other stock,	ibid.
To pay interest monies to the banks,	ibid.
To pay the governor incidental charges respecting Connecticut claim,	585

TREASURERS of COUNTIES,

How appointed,	14, 559
To pay the expences of poor witnesses and prosecutors,	263
Their duty under the tax law,	550, 552, 3
Their general duty,	559
Fees on the receipt of monies,	553, 561
When liable to prosecution,	554
To give security to the supervisors,	559, 560
Their bonds when and how prosecuted,	560
To deliver papers and books on oath to their successors,	ibid.

TRESPASS.

Persons disseised or forcibly ejected may have trespass and recover treble damages,	104
Special bail allowed in actions of trespass on land,	388

TRIAL,

By jury established in this state,	17
In the courts of the United States,	27, 32
Of crimes in the courts of the United States regulated,	27
By battle abolished,	42
In writs of right regulated,	43, 4
At bar when allowed,	315, 373
When to be in the proper county,	375
Notice and countermand thereof regulated,	375, 6
Of bastardy and legality of marriage to be by jury,	376
To whom notice thereof to be given,	378
New trials when grantable by courts of common pleas,	395

TWENTY-FIVE DOLLARS,

Debts to that amount and under how recovered—See <i>Justices' Courts</i> .	
--	--

UNDER SHERIFFS,

When to be appointed and their duty,	206, 7
Not to act as counsellors, attornies or solicitors,	221

UNITED STATES,

Constitution thereof,	19—29
Amendments thereto,	32, 3
Ratified by this state,	152, 4, 8, 9
Jurisdiction of certain places vested in them,	157, 165, 169
Title of certain lands on Staten-Island vested in them,	171, 2
Debt of this state assumed by them to be expended in fortifications,	170, 1
U S E S,	
Possession of land to follow the use,	66, 7
<i>Cestui que use</i> to have like remedy as owner,	68
Lands liable to the debts of <i>cestui que use</i> ,	68, 9
Grants good against grantors and others claiming to their use,	69
U S U R Y,	
How prevented and punished,	57—60
Payment of more than legal interest to be recovered back,	57, 8
Persons charged therewith compelled to answer in chancery,	61

V A R I A N C E,

When cured after verdict,	129
Between writ of error and record may be amended,	132

V E R D I C T,

Judgment not to be reversed for mispleading, &c. after verdict,	129, 132
---	----------

V E S S E L S,

When and how they may be arrested for debts,	166
When subject to arrest under the poor law,	580
Subject to quarantine—See <i>Diseases</i> .	

V E N D U E—See *Auction*.

V E N U E

In actions against certain officers where to be laid,	234
---	-----

V I C E - P R E S I D E N T of the UNITED STATES,

To be president of the senate,	20
How chosen and his duration in office,	24
When to administer the government,	25

V I E W

Of land, when to be granted to the tenant,	89
When and how granted in actions concerning land,	383

W A G E R of L A W,

Not allowed except in case of non-summons,	357
--	-----

W A R R A N T I E S,

Collateral and by tenant for life when void,	358
--	-----

WASTE,

By guardians and tenants how punished,	33
Process therein,	56
Proceedings therein between parceners, joint tenants and tenants in common,	ibid.
Heirs may have actions of waste,	ibid.
Tenants who assign and take the profits liable thereto,	ibid.
Pending suit how prevented,	90

WEIGHTS and MEASURES,

Standard thereof fixed,	38
How to be kept and supplied,	38, 9
Persons to be appointed to seal and mark them,	39

WESTCHESTER, TOWN of,

Trustees when chosen and their powers,	335, 6
--	--------

WILLS,

Of land how expounded,	63
What may be devised and to whom,	178
How wills of land to be executed and revoked,	ibid.
Persons incapable of devising,	ibid.
How proved in the courts of common pleas,	178, 9
Effect of such proof,	179
When to be proved in the supreme court,	180
Expences by whom borne,	ibid.
Who may be witnesses to wills,	ibid.
Devisees to witnesses void,	ibid.
Soldiers in service and mariners at sea how to make their wills,	181
Guardians by deed or will how appointed and their powers,	ibid.
Nuncupative wills how made and proved,	ibid.
Wills of personal estates how and by whom made and revoked,	ibid.
Widows may bequeath crops on their lands held in dower,	ibid.
Codicils under the same regulations as wills,	182
To forge or counterfeit them made felony,	251
On being proved before the court of probates or the surrogate to be returned,	310

WITNESSES,

Compelled to make affidavits to be used in other states,	40
Their allowance,	ibid.
How compelled to produce and prove wills,	180
Compelled to answer in cases under the absconding debtor act,	239
If poor and used on public prosecutions how paid,	263, 4
When and how examined on commission,	351, 2
Compensation for their services in addition to their fees,	356
Penalty on them for making default,	356, 399

WOLVES and PANTHERS,

Reward for killing them how granted and raised,	168
---	-----

WOMEN,

Their dower how recovered,	51—55
Consenting to a ravisher disabled to hold inheritance or jointure,	54
Ravishing of them made felony,	235

Forcible taking and marrying or defiling them how punished,	235
Deeds of married women when valid,	478
Alienation of their life estates when void,	525
Act of the husband not to prejudice the wife's right,	526
How to recover lands lost by default of their husbands,	ibid.
Their suits for lands alienated by the husband not delayed,	527
W O O D S,	
Firing of them how restrained,	146, 7
W R E C K S,	
Vessels and goods wrecked how disposed of,	62
Goods stolen at sea to be restored,	63
Persons to be appointed to aid vessels in distress,	ibid.
Penalty for secreting goods,	ibid.
W R I T I N G,	
When necessary to convey an estate in land,	79
When necessary to personal contracts and declarations and assignments in trust,	79, 80
To forge or counterfeit certain writings declared felony,	251
W R I T S,	
To run in the name of the people,	14
Of right, trial thereof regulated,	42—44
To be granted freely,	48
Form thereof to recover dower left by default,	53
Of entry in <i>le post</i> in what cases they may be had,	80
Several heirs may recover in one writ,	81
Of deceit where maintainable,	ibid.
Form thereof for tenant for life,	ibid.
Form thereof in cases of nuisance,	ibid.
Suitors to have writs out of chancery according to their cases,	82
Remedy by writ of entry,	ibid.
Of <i>novel disseisin</i> in what cases they lie,	82, 5
Of <i>cessavit</i> form thereof,	88
Form thereof in replevin,	97
Of discharge to sheriff form thereof,	204
Of inquiry from chancery in case of estates forfeited for non-settlement,	301
In case of estates escheated for want of heirs,	311
Of conspiracy, form thereof,	344
Of error—See <i>Error</i> .	

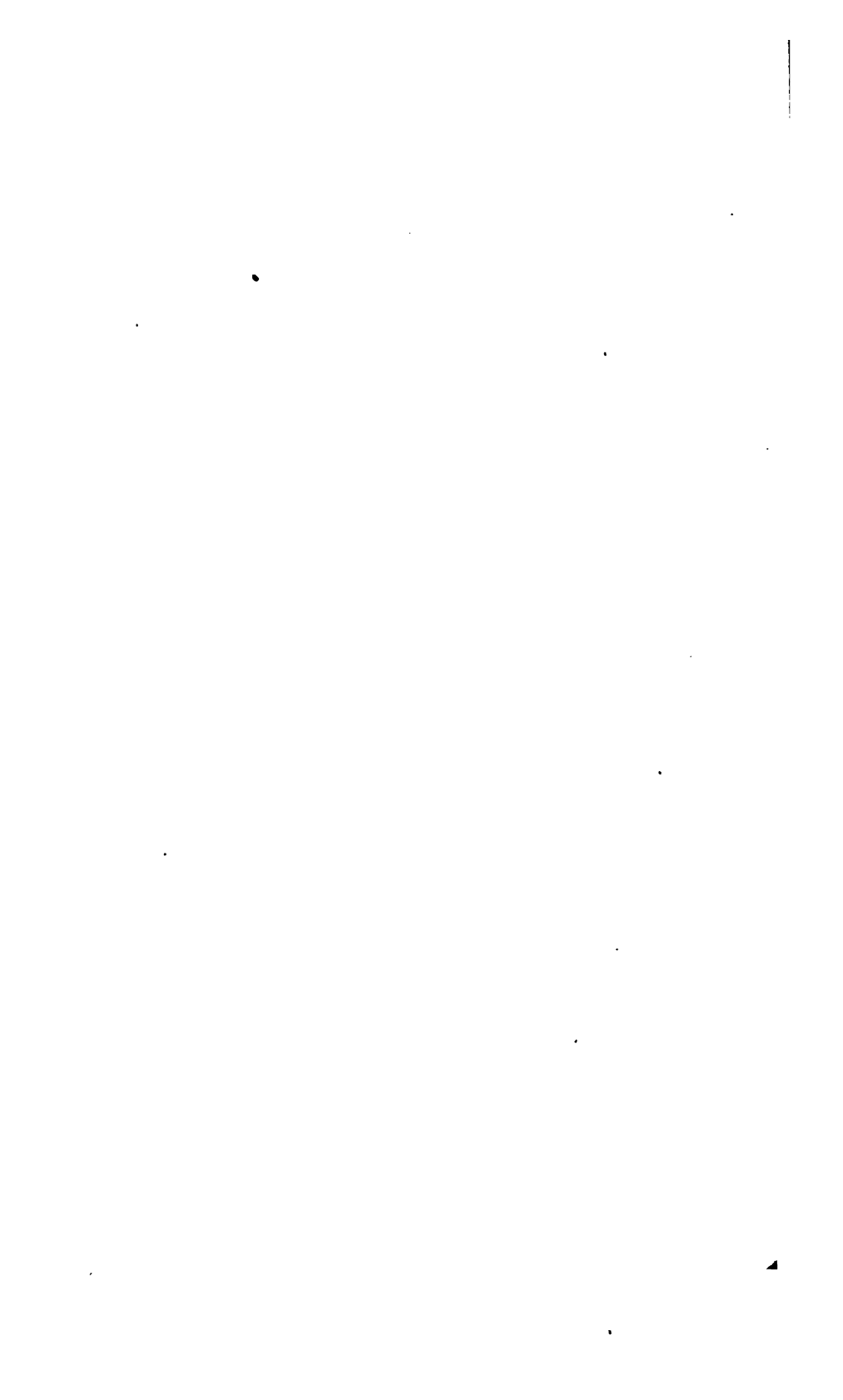
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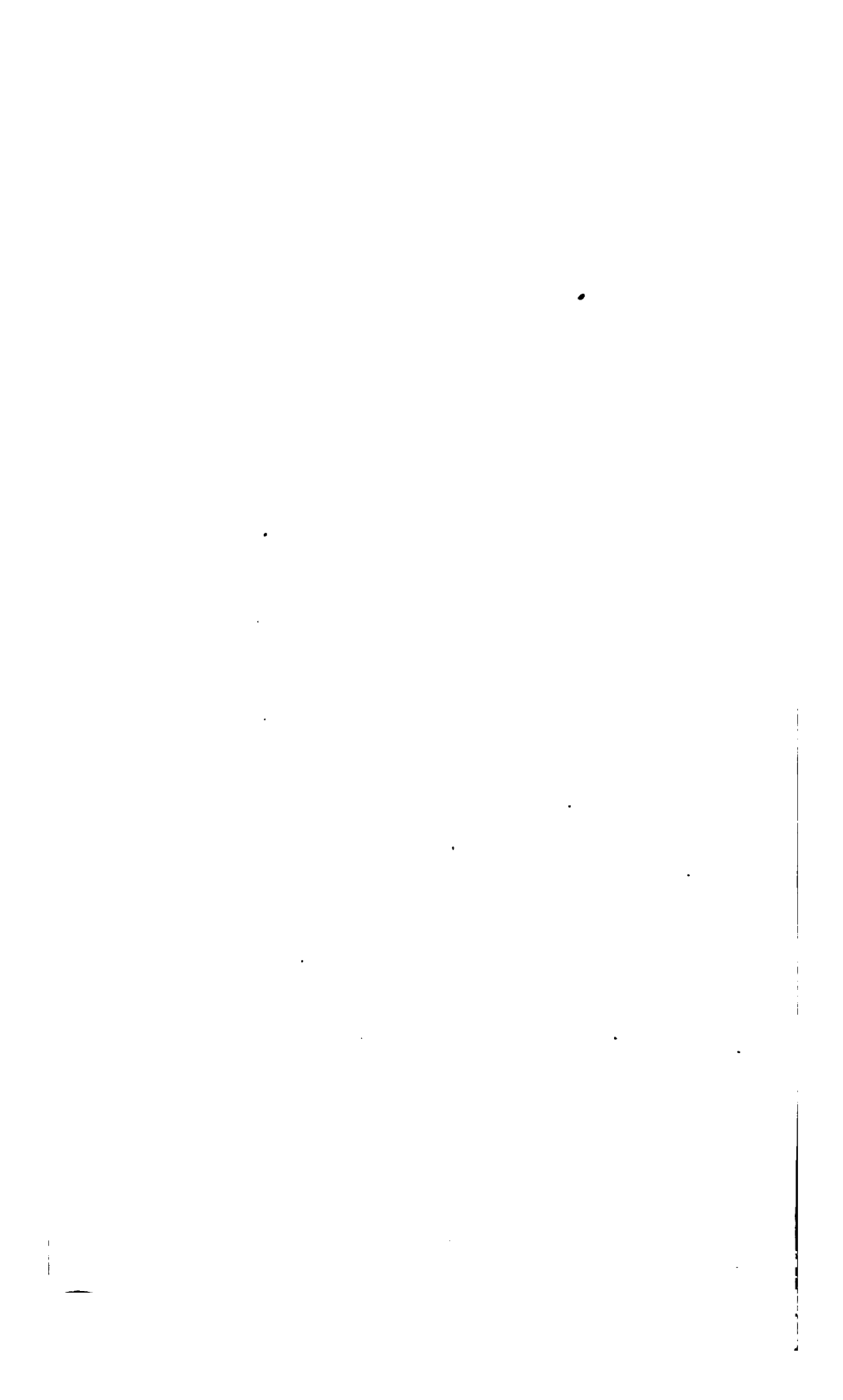
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	172				first marginal note erroneous.
	192		3,	do.	erroneous.
	195		1,	line 10,	for of read <i>as</i> .
	215		5,	15,	for proceed read <i>proceed</i> .
	264		18,	5,	after misdemeanor read <i>to the</i> .
	288		1,	13,	for Dutche's read <i>Dutchess</i> .
	320		in 2d	marginal note,	for taken read <i>prosecuted</i> .
	339		16,	line 3,	for <i>semes covertis</i> read <i>semes covert</i> .











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